

United States
19
Circuit Court of Appeals

For the Ninth Circuit.

JOHN W. FELDER, MAURICE A. GALE,
GEORGE SCHMIDT and ROBERT
GIERKE, Copartners Doing Business as
FELDER, GALE AND COMPANY,
Appellants,

vs.

H. W. REETH,

Appellee.

Transcript of Record.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF ALASKA, FOURTH DIVISION.

FILED

FEB 23 1920

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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[Endorsed]: Filed Oct. 18, 1923.

In the District Court for the Territory of Alaska,
Fourth Division.

No. 460—I.

JOHN W. FELDER, MAURICE A. GALE,
GEORGE SCHMIDT and ROBERT
GIERKE, Copartners Doing Business Under
the Firm Name and Style of FELDER,
GALE and COMPANY,

Plaintiffs,

vs.

H. W. REETH,

Defendant.

COMPLAINT.

Come now the above-named plaintiffs, and for a first cause of action against the defendant H. W. Reeth, complain and allege:

1. That at all the times mentioned herein, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, in the Fourth Division of Alaska and carrying on such business under the firm name and style of Felder, Gale and Company.

That during said times the defendant was engaged in mining in said Fourth Division of Alaska and resided at Akiak, Alaska; that he is still a resident of the Fourth Division of Alaska.

2. That between the 2d of February, 1920, and the 31st day of December, 1920, at Bethel aforesaid, at the special instance and request of the said defendant, plaintiffs sold and delivered to the defendant certain goods, wares and merchandise at and for the agreed price of Five Hundred Seven and 50/100 Dollars (\$507.50) for which said goods wares and merchandise the said defendant agreed to pay forthwith.

3. That no part of said account has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the full sum of \$507.50 and interest thereon at the rate of 8% per annum from December 31, 1920.

And for a second cause of action against the said defendant, these plaintiffs allege:

1. That at all the times mentioned herein, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, and carrying on such business under the firm name and style of Felder, Gale and Company. That the defendant during said time was and is a resident of the Fourth Division of Alaska, and engaged in mining.

2. That on or about the 28th day of July, 1919, at Bethel aforesaid, the defendant made, executed and delivered to one John Felder, his check for the sum of Two Hundred Twenty-five Dollars, of which check the following is a copy, to wit: [1*]

*Page-number appearing at the foot of page of original certified Transcript of Record.

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank.

Bethel, Alaska, July 28, 1919. No. 54.

Pay to the order of John Felder \$225.00—Two hundred twenty five Dollars.

H. W. REETH.

3. That the said John Felder thereafter, and on the same day, endorsed his name upon the said check, and delivered the same to these plaintiffs, for value, and in the ordinary course of business; that plaintiffs accepted the same in good faith for value, as aforesaid.

4. That as soon as possible thereafter, plaintiffs duly presented the said check to the Drawee named therein, to wit: The Scandinavian American Bank, at their place of business at Seattle in the State of Washington, but that the said bank refused to pay the said check for the reason that the said defendant had not sufficient funds in said bank to pay the same.

5. That plaintiffs are still the holders in due course of said check; that no part thereof has been paid and that there is still due and owing on account thereof from the defendant to plaintiffs the sum of \$225.00 and interest thereon at the rate of 8% per annum from the 28th day of July, 1919.

And for a third cause of action against the said defendant, these plaintiffs allege:

1. That at all the times mentioned herein the plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, Alaska, under the firm name and style of Felder, Gale and Company. That during said time the defendant was engaged in mining and was and still is a resident of the Fourth Division of Alaska.

2. That on or about the 12th day of August, 1919, at Bethel aforesaid, the said defendant made, executed and delivered to one George Wood, his certain check for the sum of One Hundred Seventy-nine & 95/100 Dollars, of which check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,
Bethel, Alaska.

~~Seattle, Washington~~ August 12th, 1919. No. 59.

Pay to the order of George Wood \$179.95/100—
One hundred and Seventy-nine 95/100 Dollars.

H. W. REETH.

said check being for wages due from said defendant to said Geo. Wood.

3. That the said George Wood thereafter duly endorsed his name upon said check and delivered the same to these plaintiffs for value; and in the ordinary course of business; that plaintiffs accepted the same for value in good faith and thereby became the holder thereof in due course.

4. That as soon as possible thereafter, plaintiffs duly presented the said check to the Drawee named

therein, to wit: The Scandinavian American Bank, at their place of business at Seattle in the State of [2] Washington, for payment, but that the said bank refused to pay the said check for the reason that the said defendant did not have sufficient funds in said bank to pay the same. That the said bank then and there returned the said check to plaintiffs, marked N. S. F.

5. That these plaintiffs are still the holders in due course of said check; that no part thereof has been paid and that there is still due and owing from defendant to plaintiffs on account thereof the full sum of \$179.95 and interest thereon at the rate of 8% per annum from August 12th, 1919.

For a fourth cause of action against the said defendant H. W. Reeth, these plaintiffs allege:

1. That at all the times mentioned herein, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company. That during said time the defendant was engaged in mining and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 12th day of August, 1919, at Bethel aforesaid the said defendant H. W. Reeth made, executed and delivered to one Henry Peel, his certain check for the sum of Ten Dollars (\$10.00) of which check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,
Bethel, Alaska.

~~Seattle, Washington,~~ August 12th, 1919.

Pay to the order of Henry Peel \$10.00—Ten Dollars.

H. W. REETH.

said check being given for wages due from said defendant to said Peel.

3. That the said Henry Peel thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value, and in the ordinary course of business; that plaintiffs accepted the same for value, in good faith and thereby became the holder thereof in due course.

4. That these plaintiffs duly endorsed said check and as soon as possible thereafter duly presented the same for payment to the Drawee therein named; to wit: The Scandinavian American Bank, at their place of business at Seattle, in the State of Washington, but that the said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank to pay the same. That the said bank returned the said check to plaintiffs, marked N. S. F.

5. That these plaintiffs are still the holders in due course of said check; that no part thereof has been paid and that there is still due and owing from the defendant to these plaintiffs on account

thereof the sum of Ten Dollars and interest thereon at the rate of 8% per annum from August 12, 1919.
[3]

For a fifth cause of action against the defendant H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, Alaska, under the firm name and style of Felder, Gale and Company. That during said time the defendant was engaged in mining and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 27th day of August, 1919, at Bethel aforesaid, the said defendant made, executed and delivered to one W. G. Reno, his certain check for the sum of eighty dollars, of which check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,
Bethel, Alaska.

~~Seattle, Washington,~~ August 27, 1919. No. 61.

Pay to the order of W. G. Reno \$80.00—Eighty Dollars.

H. W. REETH.

said check being for wages due from said Reeth to the said W. G. Reno.

3. That the said W. G. Reno thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value, and in the

ordinary course of business; that plaintiffs accepted the same for value in good faith and thereby became the holder thereof in due course.

4. That plaintiffs duly endorsed the said check and as soon as possible thereafter presented the same for payment to the Drawee therein named, to wit: The Scandinavian American Bank, at their place of business at Seattle in the State of Washington, but that the said bank refused to pay the same for the reason that the defendant did not have sufficient funds in said bank to pay the same. That the said bank returned the said check to plaintiffs, marked N. S. F.

5. That these plaintiffs are still the holders of said check; that no part thereof has been paid and that there is still due and owing from the defendant to these plaintiffs on account thereof the sum of Eighty dollars and interest thereon at the rate of 8% per annum from August 27th, 1919.

And for a sixth cause of action against the said defendant H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, in the Fourth Division of Alaska, under the firm name and style of Felder Gale and Company. That during said time the defendant was engaged in mining and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 27th day of August, 1919, at Bethel aforesaid the said defendant made, executed and delivered to one P. Fry, his certain

check for the sum of eighteen dollars, of which check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,

Bethel, Alaska.

~~Seattle, Washington,~~ August 27th, 1919 No. 62.

Pay to the order of P. Fry \$18.00— [4] Eight-
een Dollars.

H. W. REETH.

said check being for wages due from the said Reeth to the said P. Fry.

3. That the said P. Fry thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value, in good faith, and thereby became the holders thereof in due course.

4. That these plaintiffs duly endorsed the said check, and as soon as possible thereafter, duly presented the same for payment to the Drawee therein named, to wit: The Scandinavian American Bank, at their place of business at Seattle in the State of Washington, but that the said bank refused to pay the same for the reason that the defendant did not have sufficient funds in said bank to pay the said check. That the said bank returned the said check to plaintiffs, marked N. S. F.

5. That these plaintiffs are still the holders of said check; that no part thereof has been paid and

that there is still due and owing from the defendant to plaintiffs on account thereof, the sum of eighteen dollars and interest thereon at the rate of 8% per annum from August 27th, 1919.

And for a seventh cause of action against the said defendant, these plaintiffs allege:

1. That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 27th day of August, 1919, at Bethel, aforesaid, the said defendant made, executed and delivered to one C. H. Stickler, his certain check for the sum of Two Hundred Sixty-six Dollars and Fifty Cents (\$266.50) of which check, the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank.

Bethel, Alaska.

~~Seattle, Washington,~~ August 27th, 1919 No. 65.

Pay to the order of C. H. Stickler \$266.50—Two hundred sixty-six 50/100 Dollars.

H. W. REETH.

said check being for wages due from said Reeth to said C. H. Stickler.

3. That the said C. H. Stickler thereafter duly endorsed his name upon said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value in good faith and thereby became the holders in due course of the said check.

4. That plaintiffs as soon as possible thereafter duly presented the said check for payment to the Drawee therein named, to wit: The Scandinavian American Bank, at its place of business at Seattle, in the State of Washington, but that the said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank to pay the same. That the said bank returned [5] the said check to these plaintiffs, marked N. S. F.

5. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the full sum of \$266.50 and interest thereon at the rate of 8% per annum from August 27th, 1919.

And for an eighth cause of action against the said H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant H. W. Reeth was engaged in mining near Bethel, aforesaid

and was and is a resident of the Fourth Division of Alaska.

2. That on or about the 27th day of August, 1919, at Bethel, Alaska, the said defendant made, executed and delivered to one C. H. Stickler, his certain check for the sum of One Hundred Fifty-five Dollars, of which check, the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,
Bethel, Alaska.

~~Seattle, Washington,~~ August 27th, 1919 No. 66.

Pay to the order of C. H. Stickler \$155.00—One hundred and fifty-five Dollars.

H. W. REETH.

said check being for wages due from said Reeth to said C. H. Stickler.

3. That the said C. H. Stickler thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value, in good faith, and thereby became the holders thereof in due course.

4. That these plaintiffs duly endorsed the said check, and as soon as possible thereafter, duly presented the same for payment to the Drawee named therein, to wit: The Scandinavian American Bank, at its place of business at Seattle, in the State of Washington, but that the said bank refused to pay

the said check for the reason that the defendant did not have sufficient funds in said bank to pay the same.

5. That these plaintiffs are still the holders of said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of One Hundred Fifty-five Dollars and interest thereon at the rate of 8% per annum from August 27th, 1919.

And for a ninth cause of action against the said defendant H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant was engaged in mining and was and is now a resident of the Fourth Division of Alaska. [6]

2. That on or about the 27th day of August, 1919, at Bethel aforesaid, the said defendant made, executed and delivered to one August Berg, his certain check for the sum of Ten Dollars, of which check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,
Bethel, Alaska.

~~Seattle, Washington,~~ August 27th, 1919 No. 67.

Pay to the order of August Berg \$10.00—Ten Dollars.

H. W. REETH.

which said check was for wages due from said Reeth to said Berg.

3. That the said August Berg thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value, and in the ordinary course of business; that plaintiffs accepted the same for value, in good faith and thereby became the holders thereof in due course.

4. That these plaintiffs duly endorsed the said check and as soon as possible thereafter duly presented the same for payment to the Drawee named therein, to wit: The Scandinavian American Bank, at its place of business at Seattle, in the State of Washington, but that the said bank refused to pay the said check for the reason that the said defendant did not have sufficient funds in said bank to pay the same. That the said bank returned the said check to plaintiffs marked N. S. F.

5. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the said defendant to these plaintiffs on account thereof the

sum of \$155.00 and interest thereon at the rate of 8% per annum from August 27th, 1919.

And for a tenth cause of action against the said H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned these plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant was engaged in mining near Bethel aforesaid and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 28th day of August, 1919, at Bethel aforesaid, the said defendant made, executed and delivered to one Henry Peel, his certain check for the sum of One Hundred and Fifty Dollars, of which check, the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,
Bethel, Alaska.

~~Seattle, Washington,~~ August 28th, 1919 No. 68.

Pay to the order of Henry Peel \$150.00—One hundred and fifty dollars.

H. W. REETH.

which said check was given for wages due from the said H. W. Reeth to the said Henry Peel. [7]

3. That the said Henry Peel thereafter duly endorsed his name upon the said check and deliv-

ered the same to these plaintiffs for value, and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith, and thereby became the holders thereof in due course.

4. That these plaintiffs duly endorsed the said check and as soon as possible thereafter duly presented the same for payment to the Drawee therein named, to wit: The Scandinavian American Bank, at its place of business at Seattle in the State of Washington, but that the said bank refused to pay the said check for the reason that the said defendant did not have sufficient funds in said bank to pay the same. That the said bank returned the said check to plaintiffs marked N. S. F.

5. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of One Hundred Fifty Dollars and interest thereon at the rate of 8% per annum from August 28th, 1919.

And for an eleventh cause of action against the said H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned the plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company. That during said time the said defendant was engaged in mining near Bethel aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 28th day of August, 1919, at Bethel aforesaid, the said defendant H. W. Reeth made, executed and delivered to one Henry Peel, his certain check for the sum of \$180.00, of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank,
Bethel, Alaska. August 28th, 1919. No. 70.
~~Seattle, Washington,~~
Pay to the order of Henry Peel \$180.00—One
Hundred and eighty Dollars.

H. W. REETH

which said check was for wages due from said Reeth to said Hy. Peel.

3. That the said Henry Peel thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value, and in the ordinary course of business; that these plaintiffs accepted the same for value and in good faith, and thereby became the holders thereof in due course.

4. That these plaintiffs duly endorsed the said check and as soon as possible thereafter presented the same for payment to the Drawee therein named, to wit: The Scandinavian American Bank, at its place of business at Seattle in the State of Washington, but that the said bank refused to pay the said check for the reason that the said defendant

did not have sufficient funds in said bank to pay the same. That the said bank returned the said check to these plaintiffs, marked N. S. F. [8]

5. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs the sum of \$180.00 on account thereof, and interest thereon at the rate of 8% per annum from the 28th day of August, 1919.

And for a twelfth cause of action against the said defendant these plaintiffs allege:

1. That at all the times herein mentioned, the plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant was engaged in mining and was and is now a resident of the Fourth Division of Alaska.

2. That on or about August 28th, 1919, at Bethel, aforesaid, the said defendant made, executed and delivered to one Henry Peel, his certain check for the sum of \$9.10, of which said check, the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank,

Bethel, Alaska. August 28th, 1919. No. 71
~~Seattle, Washington,~~

Pay to the order of Henry Peel \$9.10—
Nine 10/100 Dollars.

H. W. REETH

said check being given for wages due from said
Reeth to said Peel.

3. That the said Henry Peel thereafter duly
endorsed his name upon said check and delivered
the same to these plaintiffs for value; and in the
ordinary course of business. That plaintiffs ac-
cepted the said check for value and in good faith
and thereby became the holders thereof in due
course.

4. That these plaintiffs duly endorsed said check
and as soon as possible thereafter presented the
same for payment to the Drawee named therein,
to wit: The Scandinavian American Bank, at its
place of business at Seattle in the State of Wash-
ington, but that the said bank refused to pay the
said check for the reason that the defendant did
not have sufficient funds in the said bank to pay
the same. That the said bank returned the said
check to plaintiffs, marked N. S. F.

5. That these plaintiffs are still the holders of
the said check; that no part thereof has been paid

and that there is still due and owing from the defendant to these plaintiffs on account thereof, the sum of Nine and 10/100 Dollars and interest thereon at the rate of 8% per annum from August 28th, 1919.

And for a thirteenth cause of action against the said defendant, these plaintiffs allege:

1. That at all the times herein mentioned these plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant was mining near Bethel, Alaska, and was and is now a resident of the Fourth Division of Alaska. [9]

2. That on or about September 7th, 1919, at Bethel, aforesaid, the said defendant H. W. Reeth made, executed and delivered to one Andrew Holmlund, his certain check for the sum of Fifty Dollars, of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank,

Bethel, Alaska. September 7th, 1919 No. 78
~~Seattle, Washington,~~

Pay to the order of Andrew Holmlund \$50.00
Fifty Dollars.

H. W. REETH

said check being for wages due from said Reeth to said And. Holmlund.

3. That the said Andrew Holmlund thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the said check for value and in good faith and thereby became the holders thereof in due course.

That these plaintiffs duly endorsed said check and as soon as possible thereafter, duly presented the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its place of business in Seattle, in the State of Washington, but that the said bank refused to pay the said check for the reason that the said defendant did not have sufficient funds in said bank to pay the same; that the said bank returned the said check to plaintiffs marked N. S. F.

5. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the said defendant to these plaintiffs on account thereof the sum of Fifty dollars and interest thereon at the rate of 8% per annum from September 7th, 1919.

And for a fourteenth cause of action against the said H. W. Reeth, plaintiffs allege:

1. That at all the times herein mentioned, these plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name

and style of Felder, Gale and Company; that during the said time the defendant was engaged in mining and was and is now a resident of the Fourth Division of Alaska.

2. That on or about October 5th, 1919, at Bethel aforesaid, the said defendant made, executed and delivered to one M. Johnson, the certain check for the sum of Two Hundred Twenty-one & 50/100 Dollars (\$221.50), of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank,
Bethel, Alaska. ~~Seattle, Washington,~~
October 5th, 1919 No. 80
Pay to the order of M. Johnson \$221.50—Two
hundred twenty-one 50/100 Dollars.

H. W. REETH.

the said check being given for wages due from the said Reeth to the said M. Johnson. [10]

3. That the said M. Johnson duly thereafter endorsed his name upon the said check and delivered the same to these plaintiffs for value, and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith and thereby became the holders thereof in due course.

4. That these plaintiffs duly endorsed said check and as soon as possible thereafter presented the same for payment to the Drawee therein named, to wit: The Scandinavian American Bank, at its

place of business in Seattle in the State of Washington, but that the said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank with which to pay the same. That said bank returned said check to plaintiffs, marked N. S. F.

5. That plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing on account thereof from the defendant to plaintiffs the sum of \$221.50 and interest thereon at the rate of 8% per annum from October 5, 1919.

And for a fifteenth cause of action against the said defendant, these plaintiffs allege:

That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company. That during the said time the defendant was engaged in mining near Bethel aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about October 5th, 1919, at Bethel, aforesaid, the said defendant made, executed and delivered to plaintiffs, for value, his certain check for the sum of \$231.50, of which said check, the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank,
Bethel, Alaska. ~~Seattle, Washington,~~
October 5th, 1919 No. 81

Pay to the order of Felder & Gale \$231.50—Two
hundred thirty one 50/100 Dollars.

H. W. REETH.

3. That these plaintiffs accepted the said check for value and in good faith, and thereafter duly endorsed the same, and as soon as possible thereafter presented the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its place of business in Seattle in the State of Washington, but that the said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank with which to pay the same. That said bank returned the said check to plaintiffs marked N. S. F.

4. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of \$231.50 and interest thereon from the 5th day of October, 1919. [11]

For a sixteenth cause of action against the said defendant, these plaintiffs allege:

1. That at all the times herein mentioned the plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant was engaged in mining near Bethel aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about October 25th, 1919, at Bethel, Alaska, the said defendant made, executed and delivered to one Oscar Samuelson, his certain check for the sum of Ten Dollars, of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank,
Bethel, Alaska, ~~Seattle, Washington,~~
Octo. 25th, 1919 No. 86

Pay to the order of Oscar Samuelson \$10.00—
Ten Dollars.

H. W. REETH.

said check being for wages due from said Reeth to said Samuelson.

3. That the said Oscar Samuelson thereafter duly endorsed his name upon the said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith, and thereby became the holders thereof in due course.

4. That these plaintiffs duly endorsed the said

check and as soon as possible thereafter presented the same for payment to the Drawee named therein, to wit: the Scandinavian American Bank, at its place of business in Seattle, in the State of Washington, but that the said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank with which to pay the same. That said bank returned the said check to plaintiffs, marked N. S. F.

5. That plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to these plaintiffs on account thereof the sum of \$10.00 and interest thereon at the rate of 8% per annum from October 25th, 1919.

And for a seventeenth cause of action against the said H. W. Reeth, defendant aforesaid, these plaintiffs allege:

That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska under the firm name and style of Felder, Gale and Company; that during said time the defendant was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about October 25th, 1919, at Bethel aforesaid, the said defendant made, executed and delivered to one August Berg, his certain check for the sum of Two Hundred Dollars, of which said check the following is a copy, to wit:
[12]

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank.

Bethel, Alaska, ~~Seattle, Washington,~~
Oct. 25th, 1919 No. 87

Pay to the order of August Berg \$200.00—Two
Hundred Dollars.

H. W. REETH.

said check being given for wages due from said
Reeth to said Berg.

3. That the said August Berg thereafter duly
endorsed his name on said check and delivered the
same to these plaintiffs for value and in the ordi-
nary course of business; that plaintiffs accepted
the same for value and in good faith, and thereby
became the holders thereof in due course.

4. That plaintiffs duly endorsed said check and
as soon as possible thereafter duly presented the
same for payment to the Drawee therein named, to
wit: The Scandinavian American Bank, at their
place of business in Seattle in the State of Wash-
ington, but that the said bank refused to pay the
same for the reason that the said defendant did not
have sufficient funds in said bank with which to pay
the said check. That the said bank thereafter re-
turned the said check to the plaintiffs, marked
N. S. F.

5. That these plaintiffs are still the holders of
said check; that no part thereof has been paid, and

that there is still due and owing from the defendant to plaintiffs on account thereof the sum of Two Hundred Dollars and interest thereon at the rate of 8% per annum from October 25th, 1919.

For an eighteenth cause of action against the said defendant H. W. Reeth, these plaintiffs allege:

That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company. That during the said time the defendant was engaged in mining near Bethel aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 25th day of October, 1919, at Bethel aforesaid, the said defendant H. W. Reeth made, executed and delivered to one Andrew Holmlund, his certain check for the sum of \$75.00, of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank.

Bethel, Alaska, ~~Seattle, Washington,~~
Oct. 25th, 1919 No. 88

Pay to the order of Andrew Holmlund \$75.00—
Seventy Five Dollars.

H. W. REETH.

said check being for wages due from said Reeth to said Holmlund.

3. That the said Andrew Holmlund thereafter endorsed his name upon the said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith, and thereby became the holders thereof in due course.
[13]

4. That these plaintiffs duly endorsed the said check, and as soon as possible thereafter, presented the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its place of business in Seattle, in the State of Washington, but that the said bank refused to pay the said check for the reason that the said defendant did not have sufficient funds in said bank with which to pay the same. That the said bank returned the said check to plaintiffs, marked N. S. F.

5. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of seventy-five dollars and interest thereon at the rate of 8% per annum from October 25, 1919.

And for a nineteenth cause of action against the said defendant, H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned, these plaintiffs were, and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name

and style of Felder, Gale and Company; that during said time the said defendant H. W. Reeth was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about October 25th, 1919, at Bethel, Alaska, the said defendant made, executed and delivered to one H. W. Reeth his certain check for the sum of \$25.00, of which said check, the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank.

Bethel, Alaska,

~~Seattle, Washington,~~

Oct. 25th, 1919 No. 90

Pay to the order of H. W. Reeth \$25.00—
Twenty Five Dollars.

H. W. REETH.

3. That the said H. W. Reeth thereafter endorsed his name upon said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value, in good faith and thereby became the holders thereof in due course.

4. That plaintiffs endorsed said check and as soon as possible thereafter presented the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its place of business in Seattle in the State of Washington, but that the said bank refused to pay the said check for

the reason that the said defendant did not have sufficient funds in said bank with which to pay the same. That the said bank returned the said check to plaintiffs, marked N. S. F.

5. That plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of \$25.00 and interest thereon at the rate of 8% per annum from October 25, 1910. [14]

For a twentieth cause of action against the said defendant H. W. Reeth, plaintiffs allege.

1. That at all the times herein mentioned plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company. That during said time the defendant was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about November 9th, 1919, at Bethel, aforesaid, the said defendant made, executed and delivered to one Robert Agavgoak, his certain check for the sum of \$7.00, of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank.

Bethel, Alaska,

Seattle, ~~Washington,~~

Nov. 9th, 1919 No. 94

Pay to the order of Robert Agavgoak \$7.00—
Seven Dollars.

H. W. REETH.

said check being for wages due from said Reeth to said R. Agavgoak.

3. That the said Robert Agavgoak thereafter endorsed his name upon said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith, and thereby became the holders thereof in due course.

4. That as soon as possible thereafter these plaintiffs presented the said check for payment to the Drawee therein named, to wit: to The Scandinavian American Bank at its place of business in Seattle, in the State of Washington, but that the said bank refused to pay the said check for the reason that the said defendant did not have sufficient funds in said bank with which to pay the same. That the said bank returned the said check to plaintiffs.

5. That these plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to the plaintiffs on account thereof the sum

of \$7.00 and interest thereon at the rate of 8% per annum from November 9th, 1919.

And for a twenty-first cause of action against the said defendant, these plaintiffs allege:

1. That at all the times herein mentioned these plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant was engaged in mining near Bethel aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 14th day of November, 1919, at Bethel, Alaska, the said defendant H. W. Reeth made, executed and delivered to plaintiffs for value, his certain check for the sum of \$183.00; of which check, the following is a copy, to wit: [15]

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank.

Bethel, Alaska,

Seattle, ~~Washington,~~

Nov. 14th, 1919 No. 96

Pay to the order of Felder & Gale \$183.00—One hundred eighty three Dollars.

H. W. REETH.

3. That these plaintiffs accepted the said check for and at its face value and in the ordinary course of business and in good faith; and thereafter duly endorsed the same and as soon as possible presented

the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank at its place of business in Seattle, in the State of Washington, but that said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank with which to pay the same, and returned the said check to plaintiffs, marked N. S. F.

4. That these plaintiffs then and there caused the said check to be protested for and on account of such nonpayment and was obliged to and did pay the further sum of \$3.65 on account such protest and notices thereof.

5. That plaintiffs are still the holders of said check; that no part thereof has been paid, and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of One Hundred Eighty-three Dollars and interest thereon at the rate of 8% per annum from November 14th, 1919, and the further sum of \$3.65 protest charges as aforesaid.

And for a twenty-second cause of action against the said defendant, these plaintiffs allege:

1. That at all the times herein mentioned these plaintiffs were, and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company, that during said time the said defendant H. W. Reeth was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 24th day of December, 1919, at Bethel, aforesaid, the said defendant H. W. Reeth made, executed and delivered to one August Berg, his certain check for the sum of Five Dollars, of which check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8

Member Federal Reserve Bank,
Bethel, Alaska, ~~Seattle, Washington,~~
Dec. 24th, 1919 No. 105
Pay to the order of August Berg \$5.00—Five
Dollars.

H. W. REETH.

said check being given for wages due from said Reeth to said A. Berg.

3. That the said August Berg thereafter endorsed his name upon said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith and thereupon became the holders thereof in due course. [16]

4. That as soon as possible thereafter, plaintiffs presented the said check for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its place of business at Seattle in the State of Washington, but that the said bank refused to pay the same for the reason that the said defendant did not have sufficient funds in said bank with which to pay the same, and returned the said check to plaintiffs.

5. That plaintiffs are still the holders of said check; that no part thereof has been paid, and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of \$5.00 and interest thereon at the rate of 8% per annum from December 24th, 1919.

And for a twenty-third cause of action against the said defendant, H. W. Reeth, these plaintiffs allege:

1. That at all the times herein mentioned the plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the defendant, H. W. Reeth was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 2d day of January, 1920, at Bethel aforesaid, the said defendant made, executed and delivered to one George Smith, his certain check for the sum of Fifty-five Dollars, of which said check, the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank.

Bethel, Alaska,

~~Seattle, Washington,~~

Jan. 2d, 1920 No. 1

Pay to the order of George Smith \$55.00—Fifty-five Dollars.

H. W. REETH.

said check being for wages due from said Reeth to said Geo. Smith.

3. That the said George Smith thereafter endorsed his name upon the said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith and thereupon became the holders thereof in due course.

4. That these plaintiffs endorsed said check and as soon as possible thereafter presented the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its place of business at Seattle in the State of Washington, but the said bank refused to pay the said check for the reason that the said defendant did not have sufficient funds in said bank with which to pay the same. That the said bank returned said check to plaintiffs, marked N. S. F.

5. That plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the said defendant to plaintiffs on account thereof the sum of \$55.00 and interest thereon at the rate of 8% per annum from the 2d day of January, 1920. [17]

For a twenty-fourth cause of action against the said defendant, H. W. Reeth, these plaintiffs allege:

1. That at all the times mentioned herein, the plaintiffs were, and are now copartners, engaged in a general mercantile business at the town of Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company.

That during said times the defendant H. W. Reeth was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

That on or about the 2d day of January, 1920, the said defendant, at Bethel, aforesaid, made, executed and delivered to one George Smith, his certain check for the sum of \$6.25, of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank,

Bethel, Alaska,

~~Seattle, Washington,~~

Jan. 2nd, 1920 No. 2.

Pay to the order of George Smith \$6.25—Six
25/100 Dollars.

H. W. REETH.

said check being given for wages due from said Reeth to said G. Smith.

3. That the said George Smith thereafter endorsed his name on said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the said check for value and in good faith, and thereupon became the holders of said check in due course.

4. That plaintiffs as soon as possible thereafter endorsed said check and presented the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its place of business in Seattle in the State of Washington, but that

the said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank with which to pay the same. That the said bank returned said check to plaintiffs, marked N. S. F.

5. That plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to plaintiffs on account thereof the sum of Six Dollars and Twenty-five Cents and interest thereon at the rate of 8% per annum from January 2d, 1920.

And for a twenty-fifth cause of action against the said defendant, plaintiffs allege:

1. That at all the times herein mentioned, plaintiffs were and are now copartners, engaged in a general mercantile business at the town of Bethel in the Fourth Division of Alaska, under the firm name and style of Felder, Gale and Company; that during said time the said defendant H. W. Reeth was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about January 3d, 1920, at Bethel aforesaid, the said defendant made, executed and delivered to one R. Rhodes, his certain check for the sum of Five Dollars, of which said check the following is a copy, to wit: [18]

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank.

Bethel, Alaska, ~~Seattle, Washington,~~
Jan. 3d, 1920 No. 3.

Pay to the order of R. Rhodes \$5.00—Five Dollars.

H. W. REETH.

said check being for wages due from said Reeth to the said R. Rhodes.

3. That the said H. Rhodes thereafter endorsed his name upon the said check and delivered the same to these plaintiffs for value and in the ordinary course of business; that plaintiffs accepted the same for value and in good faith, and thereupon became the holders thereof in due course.

4. That plaintiffs as soon as possible thereafter, endorsed said check and presented the same for payment to the Drawee therein named, to wit: the Scandinavian American Bank, at its office in Seattle, in the State of Washington, but that said Bank refused to pay the said check for the reason that the defendant did not have sufficient funds in the said bank to pay the same; that said bank returned the said check to plaintiffs marked N. S. F.

5. That plaintiffs are still the holders of the said check; that no part thereof has been paid and that there is still due and owing from the defendant to these plaintiffs the sum of \$5.00 and interest thereon from the 3d day of January, 1920.

And for a twenty-sixth cause of action against the said defendant, plaintiffs allege:

1. That at all the times herein mentioned plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, Alaska, under the firm name and style of Felder, Gale and Company. That during said time the defendant H. W. Reeth was engaged in mining near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That on or about the 6th day of January, 1920, at Bethel, aforesaid, the said defendant, made, executed and delivered his certain check to these plaintiffs for the sum of \$89.25, of which said check the following is a copy, to wit:

THE SCANDINAVIAN AMERICAN BANK
19-8.

Member Federal Reserve Bank.

Bethel, Alaska, Seattle, Washington,
Jan. 6th, 1920. No. 5.

Pay to the order of Felder and Gale \$98.25—
Eighty-nine 25/100 Dollars.

H. W. REETH.

3. That these plaintiffs accepted the said check for and at its face value, in good faith, and in the ordinary course of business; that plaintiffs duly endorsed the said check and as soon as possible presented the same for payment to the drawee therein named, to wit: the Scandinavian American Bank, at its place of business at Seattle, in the State of

Washington, but that said bank refused to pay the said check for the reason that the defendant did not have sufficient funds in said bank with which to pay the same. That said bank returned the said check to plaintiffs, marked N. S. F. [19]

4. That plaintiffs are still the holders of the said check; that no part thereof has been paid; that there is still due and owing from the defendant to plaintiffs on account thereof the sum of \$89.25 and interest thereon from the 6th day of January, 1920, at the rate of 8% per annum.

And for a twenty-seventh cause of action against the said defendant, H. W. Reeth, these plaintiffs allege:

1. That at all the times mentioned herein, these plaintiffs were and are now copartners, engaged in a general mercantile business at Bethel, Alaska, under the firm name and style of Felder, Gale and Company. That during said time, the defendant H. W. Reeth was engaged in mining at Golden Gate Falls, near Bethel, Alaska, and was and is now a resident of the Fourth Division of Alaska.

2. That between the first day of June, 1919, and the 2d day of June, 1920, at the special instance and request of the said defendant, one August Berg performed 2,450 hours labor on the mining claims of said defendant, for which said labor the said defendant promised and agreed to pay the said August Berg at the rate of Fifty Cents per hour. That by reason of such labor there became due from the said defendant to the said August Berg the sum

of \$1,225.00. That the said defendant paid to the said August Berg the sum of \$302.75 and no more, and there remained due and owing to the said August Berg on account thereof the sum of \$922.00.

3. That thereafter, for a good and valuable consideration, the said August Berg assigned and transferred his said account to these plaintiffs, and these plaintiffs are now the owners thereof. That plaintiffs made demand upon the said defendant H. W. Reeth for the payment thereof, but no part of said account has been paid, and that there is due and owing from the defendant to these plaintiffs on said account, the sum of \$922.00 and interest thereon at the rate of 8% per annum from the 2d day of June, 1920.

And for a twenty-eighth cause of action against the said defendant, plaintiffs allege:

1. That at all the times herein mentioned, plaintiffs were, and are now copartners, engaged in a general mercantile business at Bethel, Alaska, under the firm name and style of Felder, Gale and Company. That during said time the defendant H. W. Reeth was engaged in mining at Golden Gate Falls, near Bethel, aforesaid, and was and is now a resident of the Fourth Division of Alaska.

2. That between the first day of July, 1919, and the 3d day of June, 1920, at the special instance and request of the defendant H. W. Reeth, one Louis Nelson performed labor as cook on the mining claims of the said defendant, and for which labor the said defendant promised and agreed to pay the

said Louis Nelson at the rate of \$150.00 per month. That the said Nelson worked 10 months 4½ days and by reason thereof there became due and owing from the said defendant H. W. Reeth to the said Louis Nelson the sum of \$1,522.00. No part of which has been paid. [20]

3. That thereafter, the said Louis Nelson, for a good and valuable consideration, assigned and transferred all of his right, title and interest in and to said account to these plaintiffs, and that these plaintiffs are now the owners of the same. That plaintiffs made the demand upon the said defendant for the payment of the said account, but that the defendant has failed and neglected to pay the same. That no part of said account has been paid and there is still due and owing from the said defendant to these plaintiffs on account thereof the full sum of \$1,522.00 and interest thereon at the rate of 8% per annum from June 2d, 1920.

WHEREFORE plaintiffs pray judgment against the said defendant, H. W. Reeth, as follows:

1. On their first cause of action in the sum of \$507.50 and interest thereon at the rate of 8% per annum from December 31, 1920.

2. On their second cause of action, the sum of \$225.00 and interest thereon at the rate of 8% per annum from July 28, 1919.

3. On their third cause of action, the sum of \$179.95 and interest thereon at the rate of 8% per annum from August 12, 1919, together with damages and attorneys fees as provided by law.

4. On their fourth cause of action, the sum of \$10.00 and interest thereon at the rate of 8% per annum from August 12, 1919, together with damages and attorneys fees as provided by law.

5. On their fifth cause of action, the sum of \$80.00 and interest thereon at the rate of 8% per annum from August 27, 1919, together with damages and attorneys fees as provided by law.

6. On their sixth cause of action, the sum of \$18.00 and interest thereon at the rate of 8% per annum from August 27, 1919, together with damages and attorneys fees as provided by law.

7. On their seventh cause of action, the sum of \$266.50, and interest thereon at the rate of 8% per annum from August 27, 1919, together with damages and attorneys fees as provided by law.

8. On their eighth cause of action, the sum of \$155.00 and interest thereon at the rate of 8% per annum from August 27, 1919, together with damages and attorneys fees as provided by law.

9. On their ninth cause of action, the sum of \$10.00 and interest thereon at the rate of 8% per annum from August 27, 1919, together with damages and attorneys fees as provided by law.

10. On their tenth cause of action, the sum of \$150.00 and interest thereon at the rate of 8% per annum from August 28, 1919, together with damages and attorneys fees as provided by law.

11. On their eleventh cause of action, the sum of \$180.00 and interest thereon at the rate of 8% per annum from August 28, 1919, together with damages and attorneys fees as provided by law.

12. On their twelfth cause of action, the sum of \$9.10 and interest thereon at the rate of 8% per annum from August 28, 1919, together with damages and attorneys fees as provided by law. [21]

13. On their thirteenth cause of action, the sum of \$50.00 and interest thereon at the rate of 8% per annum from September 7, 1919, together with damages and attorneys fees as provided by law.

14. On their fourteenth cause of action, the sum of \$221.50, and interest thereon at the rate of 8% per annum from October 5, 1919, together with damages and attorneys fees as provided by law.

15. On their fifteenth cause of action, the sum of \$231.50, and interest thereon at the rate of 8% per annum from October 5, 1919.

16. On their sixteenth cause of action, the sum of \$10.00 and interest thereon at the rate of 8% per annum from October 25, 1919, together with damages and attorneys fees as provided by law.

17. On their seventeenth cause of action, the sum of \$200.00 and interest thereon at the rate of 8% per annum from October 25, 1919, together with damages and attorneys fees as provided by law.

18. On their eighteenth cause of action, the sum of \$75.00, and interest thereon at the rate of 8% per annum from October 25, 1919, together with damages and attorneys fees as provided by law.

19. On their nineteenth cause of action, the sum of \$25.00 and interest at the rate of 8% per annum from October 25, 1919, together with damages and attorneys fees as provided by law.

20. On their twentieth cause of action, the sum of \$7.00, and interest thereon at the rate of 8% per annum from November 9, 1919, together with damages and attorneys fees as provided by law.

21. On their twenty-first cause of action, the sum of \$186.85, and interest thereon at the rate of 8% per annum from November 14, 1919.

22. On their twenty-second cause of action, the sum of \$5.00, and interest thereon at the rate of 8% per annum from December 24, 1919, together with damages and attorneys fees as provided by law.

23. On their twenty-third cause of action, the sum of \$55.00, and interest thereon at the rate of 8% per annum from January 2, 1920, together with damages and attorneys fees as provided by law.

24. On their twenty-fourth cause of action, the sum of \$6.25, and interest thereon at the rate of 8% per annum from January 2, 1920, together with damages and attorneys fees as provided by law.

25. On their twenty-fifth cause of action, the sum of \$5.00, and interest thereon at the rate of 8% per annum from January 3, 1920, together with damages and attorneys fees as provided by law.

26. On their twenty-sixth cause of action, the sum of \$89.25, and interest thereon at the rate of 8% per annum from January 6, 1920.

27. On their twenty-seventh cause of action, the sum of \$922.25, and interest thereon at the rate of 8% per annum from June 2, 1920, together with damages and attorneys fees as provided by law.

28. On their twenty-eighth cause of action, the sum of \$1,522.00, and interest thereon at the rate of

8% per annum from June 2, 1920, and for damages and attorneys fees as provided by law.

29. For costs and disbursements of this action.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs. [22]

United States of America,
Territory of Alaska,
Fourth Division,—ss.

J. W. Felder, being first duly sworn on oath, says: I am one of the members of the firm of Felder, Gale and Company, and one of the plaintiffs in the above-entitled action; that I have read the foregoing complaint and know the contents thereof, and that the same is true, as I verily believe.

J. W. FELDER.

Subscribed and sworn to before me this 1 day of September, 1923.

[Seal]

L. E. BONHAM,
U. S. Commissioner. [23]

[Endorsed]: Filed Aug. 4, 1924.

[Title of Court and Cause—No. 460—I.]

ANSWER AND COUNTERCLAIM.

The defendant, for his answer and counterclaim to all of the twenty-eight causes of action set forth in the complaint of the plaintiffs, except the twenty-seventh cause of action, alleges and states:

I.

That for several years last past the defendant has been engaged in mining at a point called Golden Gate Falls, on the Riglugalic River, a tributary of the Kuskokwim River, and about one hundred miles up the Kuskokwim and Riglugalic Rivers from Bethel; that to enable him to successfully carry on his mining operations at the said Golden Gate Falls it was necessary for him to purchase and have hydraulic mining machinery, and in view of that in the year 1919 he purchased from the Bethlehem Shipbuilding Corporation, Ltd., of San Francisco, California, a hydraulic mining [25] outfit, of which the following is a description with the price paid for the different articles, to wit:

600 ft. 12" pipe)	
400 ft. 10" pipe)	
200 ft. 8" pipe)	\$1153.80
3 8" 90 deg. elbows)	
3 10" 90 deg. elbows)	
1 12" to 10" reducer)	
1 10" to 8" outlet)	140.20
2 No. 1 giants	250.00
2 Reflectors	80.00
1 Stationary Fairbanks-Morse 3 Horse	
Power gasoline engine	125.00
1 Twenty feet Grawel elevator	150.00
5 Wheelbarrows	40.00
6 Tops or baskets)	
2 Bars of $\frac{7}{8}$ inch drill steel	16.00
<hr/>	
Total	\$1955.00

which various sums of money he paid to the selling company in full for said machinery and equipment; that thereafter, and in the summer of 1920, said selling company shipped said machinery and equipment to the defendant in Alaska, delivering the same to him at Bethel, and from that point defendant started to convey the said machinery and equipment to his mining camp at Golden Gate Falls, but by reason of lack of water in the said Riglugalic River he was compelled to, and did, cache the same at an Indian village on the said river which he has called, and will call in this answer, "Supply Camp," which is about fifty miles down the said river from Golden Gate Falls and about *forth* miles up the Kuskokwim and Riglugalic *River* from Bethel; that he placed said machinery and equipment at said "Supply Camp" in a tent, which fully protected them from the weather, and placed watchmen in care thereof; that it was impossible for him to move said machinery to his mining plant during [26] the seasons of 1919, 1920 and 1921, by reason of low water in said Riglugalic River, and in consequence the said mining machinery and equipment remained at the said "Supply Camp"; that the defendant was compelled to, and did in fact, pay out of his own moneys for freight on the said mining machinery and equipment as follows:

Freight charges from San Francisco to	
Seattle	\$ 130.00
Freight charges from Seattle to Bethel...	390.00
Freight charges from Bethel to said	
“Supply Camp”	525.00

Total freight charges..... \$1045.00

making a total expenditure by him on account of said machinery and equipment and freight of \$3000.00.

II.

That at some time during the summer of 1921 the plaintiffs, without the knowledge or consent of the defendant, wrongfully and unlawfully went to the said “Supply Camp” and took possession of all of said mining machinery and equipment and transported the same down the said rivers to Bethel, and thereafter converted all of the same to their own use and benefit, sold part or all thereof, and thereby deprived this defendant of his possession and use and benefit of the whole thereof.

III.

That defendant elects to waive the tort involved in the said unlawful taking and conversion of said property and to rely upon an implied contract upon the part of the plaintiffs, created by the law, to pay him the said sum of \$3,000.00 for said machinery and equipment, the same being the amount expended by him therefor by the time it reached [27] the “Supply Camp”; that the said plaintiffs, by reason of the premises, impliedly agreed, and in

law did agree, to pay him the said sum of \$3,000.00 for the said machinery and equipment.

IV.

That in the summer of 1921 this defendant was the owner of the following described machinery which was located at Bethel, Alaska, upon which he had paid the sum of \$50.00, to wit:

12 Riv. & punch stakes.

That during the summer of 1921 the plaintiffs wrongfully and unlawfully converted the last described machinery to their own use and wholly deprived him of possession or use or benefit thereof; that he chooses to and does waive the tort committed by plaintiffs with reference to said last described machinery and will rely upon their implied promise to repay him the said \$50.00 which he had paid toward the purchase price thereof; that by reason of the premises the plaintiffs agreed to pay him the said \$50.00.

V.

That the plaintiffs have never paid this defendant any part of the said sum of \$3,000.00 and the further sum of \$50.00, and the said amounts, together with eight per cent per annum interest thereon from the 1st day of July, 1921, are now due to him from the plaintiffs and are wholly unpaid.

The defendant, for a counterclaim to the twenty-seventh cause of action stated in the complaint, which has reference to a labor bill of one August Berg for \$922.00, alleges and states: [28]

I.

That in the month of July, 1920, he was the owner of a gasoline launch called the "Virgingia" and a poling boat belonging with said gasoline launch, the said gasoline launch being of the value of \$1,100.00 and the poling boat \$150.00; that on July 3, 1920, he leased the said gasoline launch and poling boat to W. A. Munk, August Berg and A. J. Holmlund, and at that time advanced to the parties last mentioned, one hundred gallons of gasoline of the value of \$90.00, which they agreed to pay for; that the said August Berg mentioned in the said lease is the same August Berg that is referred to in the said twenty-seventh cause of action in the plaintiffs' complaint; that by the terms of said lease the said three men last named were to operate the said gasoline launch and poling boat in the carrying of freight and passengers on the Kuskokwim River and its tributaries, and were to share equally with the defendant in the profits of said enterprise; that afterwards, and in the winter of 1921 and 1922, the said W. A. Munk, August Berg and A. J. Holmlund wrongfully and unlawfully converted the said gasoline launch, poling boat and 100 gallons of gasoline to their own use and deprived this defendant of his possession and use and benefit thereof; that this defendant chooses and does waive the tort and the wrong committed by them with reference to the said launch and boat and the hundred gallons of gasoline furnished with the said launch and boat, and relies upon the implied promise upon their part to pay him the said

sums of money on account thereof; that by reason of the premises the said three persons named above as lessees, and especially said August Berg, severally agreed to pay him for said launch and boat and gasoline the sum of \$1,340.00; which said amount, together [29] with eight per cent per annum interest from the 1st day of March, 1922, is due and owing defendant from the said August Berg and has never been paid, or any part of it.

WHEREFORE, the defendant prays the judgment of this Court,

First. That the said sum of \$3,050.00 be set off and counterclaimed as against claims made by plaintiffs in all of their causes of action other than the twenty-seventh.

Second. That the plaintiffs take nothing on account of their cause of action number twenty-seven involving a labor bill of the said August Berg.

Third. That the plaintiffs have judgment upon their cause of action other than the twenty-seventh for the sum of \$1,430.65, with the interest thereon, as claimed by plaintiffs in their complaint.

LOUIS K. PRATT,
Attorney for Defendant.

United States of America,
Territory of Alaska.

H. W. Reeth, being first duly sworn, on oath says: That I am the defendant in the above-entitled cause, that I have read the foregoing answer and counterclaim, know the contents thereof, and that the same is true as I verily believe.

H. W. REETH.

Subscribed and sworn to before me this 4th day of August, 1924.

[Seal]

LOUIS K. PRATT,
Notary Public for Alaska.

My commission expires June 25th, 1928.

Service of the foregoing answer and counterclaim accepted this 4 day of August, 1924.

ALBRECHT and TAYLOR,
Attorneys for Plaintiff. [30]

[Endorsed]: Filed Aug. 6, 1924.

[Title of Court and Cause—No. 460—I.]

DEMURRER TO ANSWER AND COUNTER-
CLAIM.

The plaintiffs demur to the defendant's answer and counterclaim to all of the twenty-eight *cause* of action set forth in the complaint of the plaintiff, except the twenty-seventh cause of action, for the reason and upon the grounds that the said answer and counterclaim does not state facts sufficient to constitute a defense to plaintiff's complaint.

Plaintiffs also demur to defendants answer and counterclaim to the twenty-seventh cause of action stated in the complaint, upon the ground and for the reason that said answer and counterclaim does not state facts sufficient to constitute a defense to plaintiff's complaint.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs.

Received copy of above demurrer this 6th day of August, 1924.

LOUIS K. PRATT,
Attorney for Defendant. [31]

[Title of Cause—No. 460-I.]

**ORDER SUSTAINING AND OVERRULING
DEMURRER.**

Now, on this day, the hearing on plaintiff's demurrer herein was resumed.

Argument to the Court was resumed by counsel and the Court being fully and duly advised in the premises,—

IT IS ORDERED, that plaintiff's demurrer to defendant's answer and counterclaim herein be, and the same is hereby, overruled as to first section and sustained as to second section.

Aug. 14, 1924.

Entered in Court Journal No. 3, page 419, at Flat.
[32]

[Endorsed]: Filed Aug. 20, 1924.

[Title of Court and Cause—No. 460-I.]

SECOND AMENDED ANSWER AND COUNTERCLAIM.

The defendant, for his second amended answer and counterclaim to all the twenty-eight causes of

action set forth in the complaint of the plaintiffs, alleges and states:

I.

That prior to the year 1919 the defendant went to a point called Golden Gate Falls, on the Riglugalic River, a tributary of the Kuskokwim River, about 90 miles up the Kuskokwim and Riglugalic Rivers from Bethel, Fourth Judicial Division, Territory of Alaska, and engaged in mining, and to that end commenced acquiring, by location and purchase, mining claims at Golden Gate Falls, in the said Riglugalic River, and its tributaries; that up to 1919 defendant had located and acquired title to about 1,200 acres of placer mining ground at said point, all of which was contiguous mining ground.

II.

That to enable him to successfully carry on his [33] mining operations at the said Golden Gate Falls it was necessary for him to purchase and have hydraulic mining machinery, and in view of that in the year 1919 he purchased from the Bethlehem Shipbuilding Corporation, Ltd., of San Francisco, California, and acquired the title to a hydraulic mining plant, of which the following is a description:

- 600 ft. 12" pipe
- 400 ft. 10" pipe
- 200 ft. 8" pipe
- 3 8" 90 deg. elbows
- 3 10" 90 deg. elbows
- 1 12" to 10" reducer
- 1 10" to 8" outlet

- 2 No. 1 giants
- 2 Reflectors
- 1 Stationary Fairbanks-Morse 3-Horse Power gasoline engine
- 1 Twenty feet Grawel elevator
- 5 Wheelbarrows
- 6 Tops of baskets
- 2 Bars of $\frac{7}{8}$ inch drill steel

That thereafter, and in the summer of 1290, said selling company shipped said machinery and equipment to the defendant in Alaska, delivering the same to him at Bethel, and from that point defendant started to convey the said machinery and equipment to his *ming* camp at Golden Gate Falls, but by reason of lack of water in the said Riglugalic River and transportation facilities thereon he was compelled to, and did, cache the same at an Indian village on the said river which he has called, and will call in this answer, "Supply Camp," which is about 40 miles down the said river from Golden Gate Falls and about 50 miles up the Kuskokwim and Riglugalic *River* from Bethel; that he placed said machinery and equipment at said "Supply Camp" in a tent, which fully protected them from the weather, and placed watchmen in care thereof; that it was impossible for him to move said machinery to his mining plant during the seasons of 1919, 1920 and 1921 by reason of [34] low water in said Riglugalic River, and in consequence the said mining machinery and equipment remained at the said "Supply Camp"; that the defendant was compelled to, and did in fact, pay out of his own moneys

for freight on the said mining machinery and equipment as follows:

Freight charges from San Francisco to Seattle	\$ 130.00
Freight charges from Seattle to Bethel	390.00
Freight charges from Bethel to said "Supply Camp"	525.00
<hr/>	
Total freight charges	\$1045.00

That under the conditions then existing at said Golden Gate Falls and "Supply Camp" the said mining machinery and equipment was reasonably worth to defendant and were of the value to him of \$10,000.00.

III.

That at some time during the summer of 1921 the plaintiffs, without the knowledge or consent of the defendant, wrongfully and unlawfully went to the said "Supply Camp" and took possession of all of said mining machinery and equipment and transported the same down the said rivers to Bethel, and thereafter converted all of the same to their own use and benefit, sold part or all thereof, and thereby deprived this defendant of his possession and use and benefit of the whole thereof.

IV.

That defendant elects to waive the tort involved in the said unlawful taking and conversion of said property and to rely upon an implied contract upon the part of the plaintiffs, created by the law, to pay him the said sum of \$10,000.00 for said ma-

chinery and equipment, the same being the reasonable value therefor by the time it reached the [35] "Supply Camp"; that the said plaintiffs, by reason of the premises, impliedly agreed, and in law did agree, to pay him the said sum of \$10,000.00 for the said machinery and equipment.

V.

That in the summer of 1921 this defendant was the owner of the following described machinery which was located at Bethel, Alaska, of the value of \$200.00, to wit:

No. 12 riveting machine with dies and punch stakes.

That during the summer of 1921 the plaintiffs wrongfully and unlawfully converted the last described machinery to their own use and wholly deprived him of possession, use and benefit thereof; that he chooses to and does waive the tort committed by plaintiffs with reference to said last described machinery and will rely upon their implied promise to pay him the value thereof; that by reason of the premises the plaintiffs agreed to pay him the said sum of \$200.00.

VI.

That the plaintiffs have never paid this defendant any part of the said sums of \$10,000.00 and the further sum of \$200.00, and the said amounts, together with eight per cent per annum interest thereon from the 1st day of July, 1921, are now due to him from the plaintiffs and are wholly unpaid.

VIII.

That defendant has compelled to and has in fact employed an attorney to defend him in this action, whose fees in that behalf are reasonably worth the sum of \$500.00.

WHEREFORE, the defendant prays the judgment of this [36] court.

First. That the said sum of \$10,200.00 be set off and counterclaimed as against the claims made by plaintiffs in all of their causes of action.

Second. That the plaintiffs take nothing on account of their complaint.

Third. That defendant have judgment against the plaintiffs on his counterclaim in the sum of \$4,797.35, together with interest thereon at the rate of eight per cent per annum from July 1st, 1921.

Fourth. For his costs, disbursements and attorney's fee.

LOUIS K. PRATT,
Attorneys for Defendant.

United States of America,
Territory of Alaska,—ss.

H. W. Reeth, being first duly sworn, on oath says: That I am the defendant in the above-entitled cause, that I have read the foregoing second amended answer and counterclaim, know the contents thereof, and that the same is true as I verily believe.

H. W. REETH.

Subscribed and sworn to before me this 19th day of August, 1924.

[Seal]

LOUIS K. PRATT,

Notary Public for Alaska.

My commission expires June 25, 1928.

Service of the foregoing second amended answer and counterclaim accepted this 19th day of August, 1924.

ALBRECHT and TAYLOR,

Attorneys for Plaintiffs. [37]

[Endorsed]: Filed Aug. 2, 1924.

[Title of Court and Cause—No. 460—I.]

MOTION TO STRIKE THE SECOND
AMENDED ANSWER AND COUNTER-
CLAIM OR TO REQUIRE DEFENDANT
TO SEPARATELY STATE THE DE-
FENSES THEREIN CONTAINED.

Come now the above-named plaintiffs by their attorneys, Messrs. Albrecht and Taylor, and move the Court for an order to strike from the files the second amended answer and counterclaim of the defendant, for the reason that the same contains several defenses which are not separately stated.

Or in the alternative that the defendant be required to separate and to plead said defenses in the manner required by law.

ALBRECHT and TAYLOR,

Attorneys for Plaintiffs.

Received copy of the above motion this 21st day of August, 1924.

LOUIS K. PRATT,
Attorney for Defendant. [38]

[Endorsed]: Filed Sep. 11, 1925.

[Title of Cause—No. 460—I.]

ORDER DENYING PLAINTIFF'S MOTION
TO STRIKE DEFENDANT'S SECOND
AMENDED ANSWER AND COUNTER-
CLAIM.

Now, on this day, this cause came on regularly for hearing on plaintiff's motion to strike the second amended answer and counterclaim or to require defendant to separately state the defenses therein contained; the plaintiff appearing by and through his counsel, Chas. E. Taylor, Esq., the defendant being represented by Louis K. Pratt, Esq.

Argument to the Court was had by respective counsel and the Court being fully and duly advised in the premises,—

IT IS ORDERED that the plaintiff's motion be and is hereby denied and he is granted ninety days in which to file reply.

CLERK'S NOTE.—To which plaintiff excepts and exception is allowed by the Court.

At 10:35 A. M. Court adjourned until 10:00 A. M. of Thursday, September 3, 1925.

District Judge. [39]

Entered in Court Journal #3, page 447, at Flat.

[Endorsed]: Filed Aug. 31, 1925.

Filed Sep. 11, 1925.

[Title of Court and Cause—No. 460—I.]

DEMURRER TO SECOND AMENDED ANSWER AND COUNTERCLAIM.

Comes now the above-named plaintiffs and through their attorneys, Messrs. Albrecht and Taylor, demur to the second amended answer and counterclaim of the defendant, for the reasons:

First. That this Court has no jurisdiction of the subject matter set up in said amended answer and counterclaim.

Second. That the said second amended answer and counterclaim does not state facts sufficient to constitute a defense to the plaintiff's complaint.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs.

Received copy of above demurrer this 31st day of August, 1925.

LOUIS K. PRATT,
Attorney for Defendant. [40]

[Endorsed]: Filed Feb. 20, 1926.

[Title of Cause—No. 460—I.]

ORDER OVERRULING PLAINTIFF'S DEMURRER TO DEFENDANT'S SECOND AMENDED ANSWER.

Now, on this day, this matter came on regularly for hearing on plaintiff's demurrer to defendant's

second amended answer, the plaintiff appearing by and through his counsel, Chas. E. Taylor, Esq., the defendant being represented by Louis K. Pratt, Esq.

Argument to the Court was had by respective counsel, and the Court being fully and duly advised in the premises,—

IT IS ORDERED, that the plaintiffs' demurrer to the second amended answer be and is hereby overruled, and plaintiff granted twenty (20) days in which to file reply.

Entered in Court Journal No. 16, page 481—Fairbanks.

Entered in Court Journal No. 3, page 451—Flat.
Feb. 1. 1926. [41]

[Endorsed]: Lodged Feb. 16, 1926.

Filed March 8, 1926, at Flat.

[Title of Court and Cause—No. 460-I.]

REPLY.

Come now the plaintiffs and for reply to the second amended answer and counterclaim of the defendant, allege:

1. That they have no knowledge or information as to the matters alleged in paragraph 1 thereof, and therefore deny the same.

2. They admit that the defendant caused a quantity of hydraulic pipe and equipment to be unloaded at a point on the Rigugalic River in the

Kuskokwim Precinct, Fourth Division of Alaska, but deny that the same was placed in a tent or under any cover whatsoever, and further deny that any person or persons were placed in charge thereof or to watch or care for the same. Plaintiffs deny each and every allegation contained in said paragraph 2 of said second amended answer and counterclaim, except as in this paragraph admitted.

3. Plaintiffs deny each and every allegation contained in paragraph III thereof.

4. That as to paragraph IV, plaintiffs deny that the sum of ten thousand dollars was or is a reasonable or fair value of the said hydraulic pipe and equipment mentioned in said paragraph, either at said Rigugalic River or elsewhere, or that it was worth any sum in excess of five hundred fifty dollars either at said Rigugalic River or at any other place in said Kuskokwim Precinct, and further deny that they ever agreed to pay the defendant for said pipe and equipment, either directly or by implication of law or in any manner whatsoever.

5. Plaintiffs admit that the defendant was and is the owner of the property mentioned in paragraph V of said second amended answer and counterclaim, but deny each and every other allegation contained in said paragraph.

6. Replying to paragraph VI thereof, plaintiffs deny that there is now or ever was any amount whatsoever due from plaintiffs to defendant. [42]

7. They deny each and every allegation contained in paragraph VIII thereof.

And as a further reply to said second amended answer and counterclaim, plaintiffs allege:

1. That from about the month of June, 1919, to the month of July, 1920, the defendant was engaged in mining at Golden Gate Falls on the Righgalic River in the Kuskokwim Precinct, 4th Division of Alaska.

3. That before entering upon such work, the defendant came to plaintiffs' store at Bethel, Alaska, and desired credit from them; that they should furnish him with goods, merchandise and supplies to enable him to carry on such work, and then and there represented to plaintiffs that he had considerable good and valuable mining ground at said Golden Gate Falls and that he was desirous of working and operating the same; that he was about to send outside and have shipped in a good and sufficient hydraulic plant and equipment for such operations and that he had sufficient available funds in the Scandinavian American Bank at Seattle, Washington; that he then and there offered the said mining property and the hydraulic plant and equipment for such credit, and then and there informed plaintiffs that they would run no risk in extending such credit and cashing his checks as they would have ample security therefor in said property and equipment mentioned by him.

3. That relying on such representations of the defendant and upon such security so offered, plaintiffs thereupon agreed to extend such credit to defendant and to cash his checks on said Seattle Bank, and the defendant thereupon entered upon

his said mining operations, and employed ten men or more to carry on the same. That plaintiffs furnished and supplied defendant with all of the goods, merchandise and supplies necessary to maintain his camp at said Golden Gate Falls and to carry on his said work thereat and cashed all of the checks given by the defendant to his said employees for their labor, the said checks being drawn on said Scandinavian Bank at Seattle, Washington. That defendant also gave plaintiffs certain checks on said bank as part payment for said merchandise furnished him. That each and all of said checks were duly presented to said bank by plaintiffs and were by said bank returned to plaintiffs, unpaid, for the stated reason that the defendant did not have sufficient funds in said bank to meet said checks or any of them. That the merchandise so furnished and the checks so issued by defendant are the same identical items as those set forth and mentioned in the several causes of action in plaintiffs' complaint herein.

4. That as a result of the mining operations of the defendant on the said mining ground, there was not sufficient gold or other thing of value taken therefrom to pay plaintiffs any part of their account against defendant. That the said mining ground was and is valueless for mining purposes and was abandoned by the defendant and allowed to lapse under the laws requiring annual labor thereon. That said ground furnished no security whatsoever for plaintiffs' account. That the defendant has never made any effort to pay the plain-

tiffs for said supplies nor any part thereof, nor to pay any of the said checks so drawn by him and cashed by plaintiffs.

5. That during the early summer of 1920, the defendant caused to be shipped from the outside to Bethel, the whole of the property mentioned in paragraphs 2 and 5 of said second amended answer and counterclaim; that he left at Bethel, the property mentioned in said paragraph 5; that plaintiffs consented that the hydraulic pipe and equipment be shipped to Golden [43] Gate Falls aforesaid, to be there used by defendant in his mining operations. That instead of taking said pipe and equipment to said property, defendant caused the same to be unloaded on the banks of the Rigugalic River about forty miles from said Golden Gate Falls, and left the same on the bank of said river, near the edge thereof; uncovered and unprotected from and exposed to the elements; that it remained in such abandoned condition until the fall of the year 1921.

6. That in the fall of the year 1921, plaintiffs were informed that the Rigugalic River was running very high, and was rapidly washing away the bank thereof at the point where the said pipe and equipment were located, and that unless prompt action was taken to save the same, it would fall into the river and be lost. That thereupon and at considerable expense to themselves, plaintiffs sent up a boat and men from Bethel to the place where said pipe was located, and there found that the river was very high, and was washing the bank

from under said pipe and equipment. That the plaintiffs considered said pipe and equipment the only security they had for their account against defendant, as aforesaid, and to save said property from becoming a total loss, caused the same to be transported back to Bethel. That they immediately notified the defendant of their action and requested him to come to Bethel and make settlement and adjustment of the matters and things between them, including the saving of said property. That defendant ignored plaintiff's request and never came near them nor did he ever thereafter communicate with plaintiffs in any way. That the plaintiffs kept said pipe and equipment at the disposal of the defendant for over two years at Bethel aforesaid. That during said time there was no call or demand for the same, nor any opportunity to dispose of the same until in the fall of the year 1923 when they had a chance to dispose of the same for the sum of five hundred fifty dollars. That after notifying defendant, who never responded or came near plaintiffs, they disposed of said pipe and equipment to one Al. Walsh for said sum of \$550.00 which said sum was the full value of said property and all the same was worth in said Kuskokwim Precinct. That the amount realized from the sale of the said property was placed to the credit of the defendant on the books of plaintiff. That at no time since the arrival of said property at Bethel, aforesaid, has it had any value whatsoever, save and except a speculative value, in said community or Precinct.

7. That all other property belonging to defendant and known to plaintiffs, including the property mentioned in paragraph 5 of said second amended answer and counterclaim has been attached by the United States Marshal under a writ of attachment issued in this action, and is now in the possession of the said Marshal pending the result of this action.

Wherefore plaintiffs pray judgment against the defendant as prayed for in their complaint, less the amount of \$550.00 received for said pipe and equipment subsequently to the commencement of this action.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs. [44]

United States of America,
Territory of Alaska,
Fourth Division,—ss.

John W. Felder, being first duly sworn on oath, says: I am one of the plaintiffs in the above-entitled action; that I have read the foregoing reply and know the contents thereof, and that the same is true as I verily believe.

JOHN W. FELDER.

Subscribed and sworn to before me this 21st day of December, 1925.

[Seal]

F. C. WISEMAN,
Notary Public in and for Alaska.

My commission expires Jany. 17, 1927.

Received copy of foregoing reply this 15th day of Feby., 1926.

LOUIS K. PRATT,
Attorney for Defendant. [45]

[Title of Cause—No. 2889.]

TRIAL BY THE COURT.

Now on this day this cause came on regularly for trial, the plaintiffs appearing by and through John W. Felder, the defendant appearing also in person. The following proceedings were had, to wit:

H. W. Reeth, being first duly sworn, testified for and in behalf of the defendant.

Letter dated March 2d, 1908, George Otis Smith to H. W. Reeth, was duly offered, marked and admitted in evidence as Defendant's Exhibit 1.

Letter dated April 15, 1912, Alfred H. Brooks to H. W. Reeth, was duly offered, marked and admitted in evidence as Defendant's Exhibit 2.

Defendant rests.

Charles Linck and J. W. Felder being each first duly sworn testified for and in behalf of the plaintiff.

Deposition of John Frostland was read by the Court.

Plaintiffs rest.

At 3:05 P. M. the court adjourned until 10.00 o'clock A. M. of Wednesday, June 13th, 1928.

District Judge.

[Endorsed]: June 12, 1928.

Entered in Ruby Court Journal No. 2, page 25.

[46]

[Title of Cause—No. 2889.]

TRIAL BY THE COURT (RESUMED).

And now come the respective parties as heretofore, the trial of this cause was resumed.

H. W. Reeth, heretofore sworn, testified in rebuttal for and in behalf of the defendant.

Letter dated August 31st, 1918, J. H. Barrett to H. W. Reeth was duly offered, marked and admitted in evidence as Defendant's Exhibit 3.

Lead pencil sketch was duly offered, marked and admitted in evidence as Defendant's Exhibit 4.

Defendant rests.

J. W. Felder, heretofore sworn, testified in sur-rebuttal for and in behalf of the plaintiffs.

Plaintiffs rest.

Whereupon, pursuant to stipulation made and entered into by counsel for the respective parties, dated May 7th, 1928, this cause was transferred to Fairbanks.

[Endorsed]: Jun. 13, 1928.

Entered in Ruby Court Journal No. 2, page 28.

[47]

[Endorsed]: Filed May 7, 1928.

[Title of Court and Cause—Nos. 460—I—2889.]

STIPULATION RE TRIAL.

It is hereby stipulated between the parties hereto, by and through their respective counsel, that this action may be tried before the Court without a jury, at Bethel, Alaska, at any time the Court may sit there during the present year.

That neither counsel shall be present at the trial.

That each party shall present its own evidence with the assistance of the Court, who shall ask any and all questions that he may think proper to fetch out the truth, and who may call for further evidence upon any point not completely covered and clear.

That the defendant admits the truth of the plaintiff's complaint, and that it will only be necessary for the plaintiff to file as exhibits the checks enumerated in his complaint.

That the state of the pleadings having thrown the substantial affirmative upon the defendant he shall, after the formal opening, and filing of exhibits by the plaintiff have the burden of proving his counterclaim, and may, after plaintiff shall have introduced its evidence against such counterclaim, close the case in rebuttal.

That the complete proceedings before the Court shall be taken down by the court stenographer.

That arguments of counsel shall be had at the convenience of the Court and counsel after the return of the Court to Fairbanks.

That counsel for the defendant shall have the opening and closing of the argument.

Dated, Fairbanks, Alaska, May 7, 1928.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs.
LOUIS K. PRATT,
Attorney for Defendant. [48]

[Endorsed]: Lodged Aug. 22, 1928.

Filed Aug. 29, 1928.

[Title of Court and Cause—Nos. 460—I—2889.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Pursuant to the stipulation of the parties, as on file, this cause came on to be heard by the Court without a jury and in the absence of the attorneys for the respective parties, on the 12th and 13th days of June, 1928, at a Special Term of the said court held at Bethel, Fourth Judicial Division, Territory of Alaska. The evidence, produced by the parties themselves, was seen and heard by the Court upon the said days and, as provided for in said stipulation, oral argument was afterwards heard in open court at Fairbanks, on August 21, 1928, at which time the cause was argued upon behalf of the plaintiffs by George W. Albrecht, of the firm of Albrecht & Taylor, attorneys for plaintiffs, and by Louis K. Pratt, attorney for defendant. At the conclusion of the argument the Court announced its decision to the effect that the amounts

with accrued interest claimed by the plaintiffs in their complaint, was due them from the defendant, and that the allegations contained in the first four paragraphs of the defendant's second amended answer and counterclaim were true and that he was entitled to counterclaim as against said demand of plaintiffs the sum of \$8,000.00 with interest thereon at 8% per annum from September 1, 1921, and thereupon directed the defendant's attorney to prepare formal findings of fact and conclusions of law, which having been done are as follows: [49]

FINDINGS OF FACT.

From the evidence seen and heard in this case the Court finds the facts to be as follows:

I.

That the defendant became indebted to the plaintiffs upon the causes of action stated in their twenty-eight separate causes as set forth in their complaint, and he is now indebted to the plaintiffs upon the said causes of action with accrued interest, in the sum of \$8,690.21.

II.

That prior to August, 1921, the defendant became the owner by location and purchase of contiguous placer mining claims of an area of about 1,200 acres, located at Golden Gate Falls, on the Riglugalic River, a tributary of the Kuskokwim River, in the said Division and Territory, and up to that time had prepared the same for hydraulic mining by the construction of cabins, machine shop and other buildings, digging ditches, placing a dam across the

said river and clearing the ground of brush and was ready to commence open cut hydraulic mining thereon. That in 1919 the defendant purchased in San Francisco, California, a hydraulic mining plant, consisting of

- 600 ft. 12" pipe
- 400 ft. 10" pipe
- 200 ft. 8" pipe
- 3 8" 90 deg. elbows
- 3 10" 90 deg. elbows
- 1 12" to 10" Reducer
- 1 10" to 8" outlet
- 2 No. 1 Giants
- 2 Reflectors
- 1 Stationery Fairbanks-Morse 3-Horse Power Gasoline Engine
- 1 Twenty feet Grawel Elevator
- 5 Wheelbarrows
- 6 Tops of Baskets
- 2 Bars of $\frac{7}{8}$ inch drill steel

and in the summer of 1920 caused the same to be shipped from San Francisco, California, to Bethel, Alaska, and from there it was started for his mining ground at Golden Gate Falls on said Riglu-galic River, but owing to high water the boat transporting the same was [50] unable, by reason of the swift current, to get farther than a point called "Supply Camp" on the said river, which is about forty miles down river from the said Golden Gate Falls, and at that point the said machinery was taken from the boat and put on the bank and placed under a tent and in charge of a native Indian. That

in August, 1921, the plaintiffs employed one Tony Sumi to proceed with a power boat from Bethel to the said "Supply Camp" on the Riglugalic River and load the said machinery thereon and return it to Bethel, which the said Tony Sumi did and delivered the same to these plaintiffs who afterwards sold the same and kept the proceeds. That the action of the plaintiffs in taking the said machinery and disposing of it was without the knowledge or consent of the defendant, was unlawful, unjustifiable and oppressive and resulted in compelling the defendant to abandon his mining enterprise at Golden Gate Falls. That under the circumstances and conditions as they existed at that time and by reason of the fact that there was no market value for said machinery at that time and place, and by reason of the use that the defendant could have put it to, the said machinery was worth to him the sum of \$8,000.00 and he is entitled to counterclaim that amount with interest thereon at 8 per cent per annum from September 1, 1921, aggregating \$12,480.00 as against the debt owing by him to the plaintiffs.

CONCLUSIONS OF LAW.

The defendant H. W. Reeth, is entitled to recover of and from the plaintiffs the sum of \$3,789.79 and the costs and disbursements of the action.

Dated at Fairbanks, Alaska, this 29th day of August, 1928.

CECIL H. CLEGG,
District Judge.

Service of the foregoing findings of fact and conclusions of law by receipt of copy thereof admitted this 22d day of August, 1928.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs.

[Endorsed]: Entered in Court Journal No. 17,
page 306. [51]

[Endorsed]: Filed Aug. 25, 1928.

[Title of Court and Cause—No. 2889.]

PLAINTIFFS' OBJECTIONS TO DEFEND-
ANT'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW.

Comes now the plaintiffs and object and except to the proposed findings of fact and conclusions of law as prepared and served by Louis K. Pratt, Esq., attorney for the defendant.

1. They except to that part of the opening statement embraced in first page line 17 to second page line 2, reading as follows: "and that the allegations in the first four paragraphs of the defendant's second amended answer and counterclaim were true and that he was entitled to counterclaim as against said demand of plaintiffs," for the reason that said statement is not in accordance with the actual statement made by the Court which was that he would allow the defendant eight thousand dollars damages. And also for the reason that said statement is contradictory to the statements of findings No. II.

2. They except to all of findings No. II, for the reason that the same is intended to support the defendant's alleged counterclaim, which did not arise out of the contract or transaction set forth in the complaint as the foundation of the plaintiffs' claim; nor is it one arising on contract, but is purely a right of action in tort, and not allowable as a counterclaim under section 896 of the Compiled Laws of Alaska, or of any other law.

3. Plaintiffs object and except to the proposed conclusions of law, for the reason that said conclusions is not law, and is without basis or warrant in law.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs.

Received a copy of the above exceptions this twenty-fifth day of August, 1928.

LOUIS K. PRATT,
Attorney for Defendant.

The foregoing objections and exceptions are hereby overruled and denied, and exception allowed this 29th day of Aug., 1928.

CECIL H. CLEGG,
Judge. [52]

[Endorsed]: Filed Aug. 25, 1928.

[Title of Court and Cause—No. 2889.]

PLAINTIFFS' PROPOSED AMENDMENTS
TO THE DEFENDANT'S PROPOSED
FINDINGS OF FACTS AND CONCLU-
SIONS OF LAW.

The plaintiffs above named hereby propose the following amendments to the findings of fact and conclusions of law prepared, served, and filed by Louis K. Pratt, Esq., attorney for the defendant, to wit:

FINDINGS OF FACTS.

1. That at all the times mentioned in plaintiffs' complaint John W. Felder, Maurice A. Gale, George Schmidt, and Robert Gierke were copartners doing business as Felder, Gale & Co., and engaged in a general mercantile business at Bethel, Alaska.

2. That between the 2d day of February, 1920, and the 31st day of December, 1920, at Bethel, Alaska, the plaintiffs, at the special instance and request of the defendant, sold and delivered to the defendant certain goods, wares and merchandise for the agreed price of five hundred and seven dollars and fifty cents (\$507.50), as set forth in the plaintiffs' first cause of action, and as shown by the Plaintiffs' Exhibit "A"; and that no part thereof has ever been paid.

3. That between the 28th day of July, 1919, and the 6th day of June, 1920, the defendant made,

executed and delivered his certain checks, twenty-five in number and aggregating \$2,450.90, drawn on the Scandinavian-American Bank of Seattle; that the plaintiffs cashed all of said checks and duly presented them for payment, and that all of said checks were returned to the plaintiffs dishonored and that none of them have ever been paid, as is set forth in the plaintiffs' 2d to 26th causes of action, inclusive, and as is shown by the Plaintiffs' Exhibits "B1" to "B25," inclusive.

4. That between the first day of June, 1919, and the 2d day of June, 1920, at the special instance and request of the defendant one August Berg performed 2,450 hours of labor on the mining claims of the defendant, for which said labor the defendant then and there promised and agreed to pay the said August Berg at the rate of fifty cents per hour. That by reason of said labor there became due from the defendant to said August Berg the sum of \$1,225. That the defendant paid to said August Berg the sum of \$302.75, and no more, and that there remained due and owing to the said August Berg on account thereof the sum of \$922.25.

That thereafter for a good and valuable consideration the said August Berg assigned and transferred his said account to the plaintiffs, and that these plaintiffs are now the owners thereof. That the plaintiffs have made demand upon the defendant for payment thereof but that no part of said account has ever been paid; as is set forth in the plaintiffs' 27th cause of action, and as shown by the Plaintiffs' Exhibit "C."

5. That between the first day of July, 1919, and the 3d day of June, 1920, at the special instance and request of the defendant one Louis Nelson performed labor as cook on the mining claims of [53] the defendant, and for which labor the defendant then and there promised and agreed to pay to the said Louis Nelson at the rate of \$150 a month. That the said Louis Nelson so worked 10 months 4½ days, and by reason thereof there became due and owing from the defendant to the said Louis Nelson the sum of \$1,522, no part of which has ever been paid.

That thereafter the said Louis Nelson for a good and valuable consideration assigned and transferred said account to the plaintiffs, and that the plaintiffs are now the owners of the same.

That plaintiffs made due demand upon the defendant for payment of said account, but that defendant has not paid the same or any part thereof; as is set forth in the plaintiffs' 28th cause of action, and as is shown by the Plaintiffs' Exhibit "D."

6. That the plaintiffs, in the fall of 1921, and for the purpose of saving the same from being lost through falling to the Rigugalic River, took possession of a quantity of hydraulic pipe and other mining equipment, the property of the defendant, and held the same for about two years and then disposed of all the property for the sum of five hundred and fifty dollars (\$550), which amount the plaintiffs credited in account to the defendant.

CONCLUSIONS OF LAW.

1. That the defendant's alleged counterclaim is not one arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiffs' claim; nor is it one arising on contract, but is purely a right of action in tort, and is not allowable as a counterclaim under section 896 of the Compiled Laws of Alaska, or of any other law.

2. That taking into consideration the plaintiffs' 28 causes of action and the credit set forth in the plaintiffs' reply, together with interest thereon, there is now due and owing from the defendant to the plaintiffs the sum of eight thousand one hundred and ninety dollars and twenty-one cents (\$8,190.21); and that the plaintiffs are entitled to a judgment against the defendant for said sum, and for their costs and disbursements of this action.

ALBRECHT and TAYLOR,

Attorneys for Plaintiffs.

Received a copy of the above this twenty-fifth day of August, 1928.

LOUIS K. PRATT,

Attorney for Defendant.

The foregoing amendments are hereby overruled and denied and exception allowed this 29th day of August, 1928.

CECIL H. CLEGG,

Judge. [54]

[Endorsed]: Filed Aug. 31, 1928.

[Title of Court and Cause—No. 2889.]

MOTION FOR NEW TRIAL.

Come now the plaintiffs above named, and move this Honorable Court for an order setting aside the findings of facts and conclusions of law, and the judgment based thereon, heretofore found and given on the twenty-ninth day of August, 1928, and giving and granting to the plaintiffs a new trial of said action, upon the grounds following, to wit:

1. That the defendant's alleged counterclaim is not one arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiffs' claim.

2. That the said plaintiffs' claim is based upon contract, and the defendant's alleged counterclaim is not one arising on contract, but is purely a right of action in tort, and is not allowable as a counterclaim under section 896 of the Compiled Laws of Alaska, or of any other law.

3. Errors in law by admitting any evidence whatever to support the defendant's alleged counterclaim.

4. Insufficiency of the evidence to justify the judgment.

5. Error in law in pronouncing any judgment in favor of the defendant.

ALBRECHT and TAYLOR.

ALBRECHT and TAYLOR,

Attorneys for Plaintiffs.

Received copy of the above this thirty-first day of August, 1928.

LOUIS K. PRATT,
Attorney for Defendant. [55]

[Title of Cause—No. 2889.]

ORDER DENYING PLAINTIFFS' MOTION
FOR NEW TRIAL.

Now on this day, this matter came on for hearing on the plaintiffs' motion for new trial, the plaintiffs appearing by and through Geo. W. Albrecht, Esq., the defendant being represented by Louis K. Pratt, Esq.

Argument to the Court was had by respective counsel and the Court having heard the arguments and being fully and duly advised in the premises,—

IT IS ORDERED that the plaintiffs' motion for a new trial be, and is hereby, denied.

Oct. 6, 1928.

Entered in Court Journal No. 17, page 318. [56]

[Endorsed]: Filed Oct. 10, 1928.

In the District Court for the Territory of Alaska,
Fourth Judicial Division.

No. 2889.

JOHN W. FELDER, MAURICE A. GALE,
GEORGE SCHMIDT and ROBERT
GIERKE, Copartners, Doing Business as
FELDER, GALE and COMPANY,
Plaintiffs,

vs.

H. W. REETH,

Defendant.

JUDGMENT.

Now, at this time, to wit, August 21, 1928, the same being one of the days of the regular February, 1928, term of this court, this cause came on to be heard, on the complaint, second amended answer and counterclaim and reply, the evidence having previously been taken by the Court, in the absence of attorneys for either party, at a special term of said court, held in Bethel, Alaska, in the said Division, on the 12th and 13th days of July, 1928. The plaintiffs appeared by George W. Albrecht of the firm of Albrecht & Taylor, attorneys for plaintiffs, and argued the case on behalf of the plaintiffs, and Louis K. Pratt appeared on behalf of the defendant and argued the case in his behalf. At the conclusion of the arguments the Court announced its decision orally and directed the attorney for the

defendant to prepare formal findings of fact and conclusions of law and submit them to the Court for signature, which having been done, and the same having been signed by the Judge of the said court and filed with the papers in the cause, in accordance therewith,— [57]

IT IS CONSIDERED, ORDERED AND ADJUDGED by the Court that the defendant, H. W. Reeth have and recover from the plaintiffs, John W. Felder, Maurice A. Gale, George Schmidt and Robert Gierke, copartners, doing business as Felder, Gale and Company, the sum of three thousand seven hundred eighty-nine dollars and seventy-nine cents (\$3,789.79) and the costs and disbursements of the action, amounting to \$30.95, to be taxed by the Clerk of this court, for the collection of which let execution issue on demand of defendant or his attorney.

This judgment shall draw interest at the rate of eight (8%) per centum per annum from its date.

Dated at Fairbanks, Alaska, this 10th day of October
~~September~~, 1928.

CECIL H. CLEGG,
District Judge.

Received copy Oct. 6, 1928.

ALBRECHT and TAYLOR.

Entered in Court Journal No. 17, page 320. [58]

[Endorsed]: Filed Oct. 22, 1928.

[Title of Court and Cause—No. 2889.]

ORDER EXTENDING TIME TO AND INCLUDING DECEMBER 15, 1928, TO FILE BILL OF EXCEPTIONS.

This matter coming on regularly for hearing on the application of the plaintiffs above named for an extension of time within which to prepare, serve, and file a bill of exceptions in the above-entitled cause, and it appearing to this Court that good cause exists for extending the time within which to prepare, serve, and file a bill of exceptions based on the judgment rendered in said cause on the tenth day of October, 1928; and the Court being fully advised in the premises,—

IT IS ORDERED that the plaintiffs be, and they are hereby given and granted until and including the fifteenth day of December, 1928, within which to prepare, serve, and file their bill of exceptions based on the judgment of this Court entered in said cause October tenth, 1928.

Done at Fairbanks, Alaska, on this the nineteenth day of October, 1928.

CECIL H. CLEGG,
District Judge.

Entered in Court Journal No. 17, page 324. [59]

[Endorsed]: Filed Dec. 12, 1928.

[Title of Court and Cause—No. 2889.]

BILL OF EXCEPTIONS AND ASSIGNMENT
OF ERRORS.

Now on the 12th day of December, A. D. 1928, come the above-named plaintiffs John W. Felder, Maurice A. Gale, George Schmidt and Robert Gierke, copartners doing business as Felder, Gale and Company, by their attorneys, Messrs. Albrecht and Taylor, and say that the judgment entered in the above-entitled action on the tenth day of October, 1928, is erroneous and against the just rights of the said plaintiffs, for the following reasons, to wit:

1. The Court erred in denying the plaintiff's motion to strike from the files the defendant's second amended answer and counterclaim, or in the alternative that the defendant be required to separate and plead the defenses therein contained in the manner required by law, for the reason that the said second amended answer and counterclaim contains several defenses which are not separately stated.

2. The Court erred in overruling the plaintiff's demurrer to defendant's second amended answer and counterclaim for the following reasons.

(a) That this court has no jurisdiction of the subject matter set up in said answer and counterclaim; it not being a proper subject of counterclaim under the laws of Alaska.

(b) That said second amended answer and counterclaim does not state facts sufficient to constitute a defense to the plaintiff's complaint.

3. The Court erred in overruling paragraph 2 of plaintiff's objections to defendants proposed findings of fact and conclusions of law, wherein they objected to the whole of paragraph 2 of said proposed findings of fact because the said paragraph 2 of said proposed findings of fact is intended to support the defendant's alleged counterclaim, which did not arise out of the contract or transaction set forth in plaintiff's complaint; nor is it one arising on contract, but is purely [60] a right of action in tort, and not allowable as a counterclaim under the laws of Alaska.

4. The Court erred in finding as a fact the following statement contained in paragraph 2 of the findings of fact and conclusions of law filed herein, commencing at paragraph 2 thereof as follows:

“That prior to August, 1921, the defendant became the owner by location and purchase of contiguous placer mining claims of an area of about 1200 acres located at Golden Gate Falls, on the Rigugalic River, a tributary of the Kuskokwim River, in the said Division and Territory, and up to that time had prepared the same for hydraulic mining by the construction of cabins, machine shops and other buildings, diggong ditches, placing a dam across said river and clearing the ground of brush and was ready to commence open cut hydraulic mining thereon.”

for the reason that the same is irrelevant and immaterial, and is inserted as a foundation for damages in tort, which tort the said defendant has expressly waived in his answer, aforesaid.

5. The Court erred in finding as a fact the following statement contained in said paragraph 2 of the findings of fact aforesaid, commencing at the middle of line 18 thereof on page 3, and including the words "and in charge of a native Indian," for the reason that such finding is not supported by any evidence whatever, and is inserted as a further foundation for damages in tort.

6. The Court erred in finding as a fact that portion of said Section 2 of such findings, commencing on line 19 at page 3 thereof with the words;

"That in August, 1921, the plaintiffs employed one Tony Sumi to proceed with a power boat from Bethel to the said Supply Camp on the Riglugalic River and load the said machinery thereon and return it to Bethel, which the said Tony Sumi did and delivered the same to these plaintiffs who afterward sold the same and kept the proceeds. That the action of the plaintiffs in taking the said machinery and disposing of it was without the knowledge or consent of the defendant, was unlawful, unjustifiable and oppressive and resulted in compelling the defendant to abandon his mining enterprize at Golden Gate Falls."

for the reason that such allegation is inserted as a further foundation for damages in tort, and that

such tort is not a proper counterclaim to the plaintiff's complaint.

7. That the Court erred in refusing to find as a fact the plaintiff's proposed finding of fact No. 6 as set out in said proposed findings, as follows:

6. That the plaintiffs, in the fall of 1921, for the purpose of saving the same from being lost through falling into the Riglugalic River, took possession of a quantity of hydraulic pipe and other mining equipment, the property of the defendant, and held the same for about [61] two years and then disposed of all of the said property for the sum of five hundred and fifty dollars (\$550.00), which amount the plaintiff credited in account to the defendant."

for the reason that such allegation is a material fact and is supported by the evidence.

8. The Court erred in finding as a fact that certain allegation contained in paragraph 2 of the said findings of fact, commencing on line 29 of page 3 thereof and continuing as follows:

"That under the circumstances and conditions as they existed at that time and that by reason of the fact that there was no market value for the said machinery at that time and place, and by reason of the use that the defendant could have put it to, the said machinery was worth to him the sum of \$8000.00."

for the reason that the said finding is inserted as a further basis and foundation for damages in tort,

and that such tort is not a proper counterclaim to plaintiff's complaint.

9. The Court erred in finding as a fact that certain allegation commencing on line 34 of *page of* the findings of fact and conclusions of law aforesaid, and continuing as follows:

“and he is entitled to counterclaim that amount with interest thereon at 8% per cent per annum from September 1, 1921, as against the debt owing by him to plaintiffs.

for the reason that such damages sound in tort, and are not a proper counterclaim to plaintiff's complaint, and that such allegation is a conclusion of law.

10. That the Court erred in concluding as a matter of law that the defendant H. W. Reeth, is entitled to recover of and from the plaintiffs the sum of \$3,789.79 and the costs and disbursements of the action, for the reason that such conclusion is not warranted or sustained by the facts of the case, and that such amount is not a proper counterclaim against plaintiff's complaint, nor did it arise out of the same transaction sued upon by plaintiffs.

11. The Court erred in overruling the plaintiffs objections to said conclusion of law as set forth in Paragraph 3 of “plaintiff's objections to defendants proposed findings of fact and conclusions of law,” and which proposed findings and conclusions were thereafter adopted by the Court as the findings of this case.

12. The Court erred in refusing to allow and

adopt Paragraph 1 of plaintiffs proposed conclusions of law, as follows: [62]

“That the defendant’s alleged counterclaim is not one arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff’s claim; nor is it one arising on contract, but is purely a right of action in tort, and is not allowable as a counterclaim under Section 896 of the Compiled Laws of Alaska, or any other law.

for the reason that such proposed conclusion is the proper law governing this action.

13. The Court erred in refusing to allow and adopt Paragraph 2 of plaintiff’s proposed conclusions of law, as follows:

“That taking into consideration the plaintiff’s 28 causes of action and the credit set forth in plaintiff’s reply, together with interest thereon, there is now due and owing from the defendant to the plaintiffs the sum of eight thousand one hundred and ninety dollars and twenty-one cents (\$8190.21) and that the plaintiffs are entitled to a judgment against the defendant for said sum and for their costs and disbursements of this action.

for the reason that such conclusion of law is fully borne out by the pleadings, the evidence and is the proper law governing the case.

14. The Court erred in giving and entering judgment against the plaintiffs in this action, for the reason that the facts alleged in plaintiffs complaint are admitted by the defendant; that the counter-

claim set out in defendant's second amended answer and counterclaim did not grow or arise out of the same transaction, but is for damages in tort, and is not a proper subject of counterclaim under the laws of Alaska.

15. The Court erred in overruling plaintiff's motion for a new trial, for the reason that the pleadings in said action and the evidence adduced thereon and admitted by the Court to sustain the counterclaim of the defendant was not sufficient to justify a judgment in favor of the defendant, and that such judgment was erroneous in law as well as in fact.

ALBRECHT and TAYLOR,

Attorneys for Plaintiffs.

P. O. Address: Fairbanks, Alaska.

Due service of the foregoing bill of exceptions and assignment of errors admitted by receipt of a copy thereof this December 12, 1928.

LOUIS K. PRATT,

Attorney for Defendant. [63]

[Endorsed]: Filed Dec. 12, 1928.

[Title of Court and Cause—No. 2889.]

PETITION FOR APPEAL.

The above-named plaintiffs John W. Felder, Maurice A. Gale, George Schmidt and Robert Gierke, copartners doing business as Felder, Gale and Company, considering themselves aggrieved by the judgment of this Court made and entered in

this action on the 10th day of October, A. D. 1928, do hereby appeal from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified and set forth in the assignment of error, which is filed herewith and said plaintiffs and each of them pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated by the Clerk of this Court, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Fairbanks, Alaska, December 12th, 1928.

ALBRECHT and TAYLOR,
Attorneys for said Plaintiffs.

Due service of the foregoing petition for appeal, and a copy thereof is hereby acknowledged this 12th day of December, 1928.

LOUIS K. PRATT,
Attorney for Defendant. [64]

[Endorsed]: Filed Dec. 12, 1928.

[Title of Court and Cause—No. 2889.]

ORDER ALLOWING APPEAL.

Now, on this 12th day of December, 1928, the same being one of the regular juridical days of the 1928 Term of the above court, held at Fairbanks, Alaska, this cause came on to be heard upon petition of the above-named plaintiffs for an appeal to

the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this Court made and entered in this action on the 10th day of October, 1928, and the Court being fully advised in the premises,—

IT IS ORDERED that the said plaintiff's appeal to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same is hereby allowed, upon the execution by the appellants of a good and sufficient bond to be approved by this Court, in the sum of \$500.00 said bond to be conditioned as a cost bond on appeal.

Done in open court this 12th day of December, A. D. 1928.

CECIL H. CLEGG,
District Judge.

Due service of order allowing appeal and receipt of copy of above acknowledged this 12th day of December, A. D. 1928.

LOUIS K. PRATT,
Attorney for Defendant.

Entered in Court Journal No. 17, page 357. [65]

[Endorsed]: Filed Dec. 12, 1928.

[Title of Court and Cause—No. 2889.]

NOTICE OF APPEAL.

To H. W. Reeth, the Above-named Defendant, and
to Louis K. Pratt, Esq., His Attorney.

You and each of you will please take notice that

the above-named plaintiffs, John W. Felder, Maurice A. Gale, George Schmidt and Robert Gierke, copartners doing business as Felder, Gale and Company, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, from that certain judgment made and entered in the above-entitled action in the District Court for the Territory of Alaska, Fourth Judicial Division, on the Tenth day of October, A. D. 1928, in favor of the above-named defendant and against the said plaintiffs, in which said judgment the said defendant was awarded the sum of \$3,789.79 and the costs of the said action; plaintiffs also appeal from the order of said District Court overruling the plaintiff's motion for a new trial of said cause, made on October 6, 1928.

Said appeal is taken on questions of both law and fact.

ALBRECHT and TAYLOR,

Attorneys for Plaintiffs.

P. O. Address: Fairbanks, Alaska.

Received copy of above notice of appeal this 12th day of December, 1928.

LOUIS K. PRATT,

Attorney for Defendant. [66]

[Endorsed]: Filed Dec. 13, 1928.

[Title of Court and Cause—No. 2889.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, John W. Felder, Maurice A. Gale, George Schmidt and Robert Gierke, copartners, doing business as Felder, Gale and Company, principals and National Surety Company, a corporation, as surety, are held and firmly bound unto H. W. Reeth, the above-named defendant, in the sum of five hundred dollars (\$500.00) lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, A. D. 1928.

The condition of the above obligation is such, that whereas the above-named plaintiffs have taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain judgment rendered in the above-entitled action in the District Court for the Territory of Alaska, Fourth Division, on the 10th day of October, 1928.

NOW, THEREFORE, if the above-named plaintiffs, appellants, shall prosecute the said appeal to effect, and answer all costs if they fail to make good

their plea, then this obligation shall be void, otherwise to remain in full force and effect.

FELDER, GALE and COMPANY,
[Seal] By CHAS. E. TAYLOR,
One of Their Attorneys,
Principals.
NATIONAL SURETY COMPANY.
By GEO. W. ALBRECHT,
Its Attorney-in-fact,
Surety.

The above bond approved this 12th day of December, 1928.

CECIL H. CLEGG,
District Judge. [67]

[Endorsed]: Filed Dec. 13, 1928.

[Title of Court and Cause—No. 2889.]

CITATION ON APPEAL.

The President of the United States of America, to the Above-named H. W. Reeth, Appellee, and to Louis K. Pratt, Esq., His Attorney,
GREETING:

You are hereby cited to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to an order allowing an appeal, made and entered in the above-entitled cause, in which John W. Felder, Maurice A.

Gale, George Schmidt and Robert Gierke, copartners, doing business as Felder, Gale and Company are plaintiffs and appellants and H. W. Reeth is defendant and appellee, to show cause, if any there be, why the judgment made and entered in said action on the tenth day of October, 1928, as mentioned in said order allowing appeal, should not be set aside and reversed, and why speedy justice should not be done to said appellants above named in that behalf.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States of America, on this 12th day of December, A. D. one thousand nine hundred and twenty-eight and of our Independence one hundred fifty-three.

Attest my hand and the seal of the above-named District Court at Fairbanks, Alaska, on this the twelfth day of December, A. D. one thousand nine hundred twenty-eight.

CECIL H. CLEGG,
District Judge.

Due service of the foregoing citation admitted this 13th day of December, 1928.

LOUIS K. PRATT,
Attorney for Appellee. [68]

[Endorsed]: Filed Dec. 12, 1928.

[Title of Court and Cause—No. 2889.]

STIPULATION RE PRINTING OF RECORD.

It is hereby stipulated by and between the above

parties plaintiff and defendant, through their respective attorneys, that in printing the papers and records to be used on the hearing on appeal in the above-entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the court and cause in full on all papers shall be omitted, except on the first page of said record, and that there shall be inserted in place of said title in all papers used as a part of said record the words, "Title of Court and Cause"; also that all indorsements on all papers used as a part of said record shall be omitted, except the Clerk's filing marks and the admission of service.

Dated at Fairbanks, Alaska, this 12 day of December, 1928.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs.
LOUIS K. PRATT,
Attorney for Defendant. [69]

[Endorsed]: Filed Dec. 14, 1928.

[Title of Court and Cause—No. 2889.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To Robert W. Taylor, Clerk of the Above-entitled Court:

You will please prepare transcript of the record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court

of Appeals for the Ninth Circuit, at San Francisco, California, upon appeal heretofore perfected to said court, and will include in said transcript the following documents, papers and records, to wit:

1. Complaint.
2. Answer and counterclaim.
3. Demurrer to answer and counterclaim.
4. Order sustaining demurrer.
5. Second amended answer and counterclaim.
6. Plaintiff's motion to strike second amended answer and counterclaim.
7. Order denying motion.
8. Plaintiff's demurrer to second amended answer and counterclaim.
9. Order overruling demurrer.
10. Reply of plaintiff.
11. ~~Stipulation to take depositions of witnesses.~~
C. E. T.
12. Trial by Court at Bethel—Proceedings. ~~Evi-~~
~~dence of witnesses.~~
13. ~~Deposition of Witness John Froskland.~~ C. E. T.
14. ~~Deposition of Witness Tony Sumi;~~ C. E. T.
15. ~~Deposition of witness Robert Egsak;~~ C. E. T.
16. Stipulation as to trial of case at Bethel.
17. Findings of fact and conclusions of law.
18. Plaintiff's objections to findings of fact and conclusions of law. [70]
19. Plaintiff's proposed amendments to findings of fact and conclusions of law.
20. Plaintiff's motion for new trial.
21. Order denying motion for new trial.
22. Judgment.

23. Order extending time for filing bill of exceptions.
24. Bill of exceptions and assignment of errors.
25. Petition for appeal.
26. Order allowing appeal.
27. Notice of appeal.
28. Bond on appeal.
29. Citation.
30. Stipulation relative to printing of record.
31. Praecipe for transcript of record.
32. Designation of place of hearing appeal.
33. Order extending time within which to file and docket cause on appeal.
34. ~~Designation of place of hearing appeal.~~ Omit
—same as No. 32 above.

This transcript to be prepared as required by law and the rules of this court and of the United States Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on or before the fifteenth day of February, A. D. 1929, pursuant to the order of this Court.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs-Appellants.

Due service of the foregoing praecipe for transcript of record and receipt of a copy thereof duly admitted this 14th day of December, A. D. 1928.

LOUIS K. PRATT,
Attorney for Defendant-Appellee. [71]

[Endorsed]: Filed Dec. 14, 1928.

[Title of Court and Cause—No. 2889.]

DESIGNATION OF PLACE FOR HEARING
APPEAL.

To the Honorable CECIL H. CLEGG, Judge of the
Above-entitled Court, and to H. W. Reeth, the
Above-named Defendant, and Louis K. Pratt,
Esq., His Attorney.

Come now the above-named appellants, plain-
tiffs in the above-entitled cause, and pursuant to the
provisions of the Act of Congress, giving the desig-
nation of the place of hearing on appeals to the
appellant, does hereby designate the City and
County of San Francisco, State of California, as
the place for the hearing of the said appeal in the
above-entitled action.

Dated at Fairbanks, Alaska, December 14, 1928.

ALBRECHT and TAYLOR,
Attorneys for Plaintiffs.

Due service of the foregoing is hereby admitted
this 14th day of December, A. D. 1928.

LOUIS K. PRATT,
Attorney for Defendant. [72]

[Endorsed]: Filed Dec. 14, 1928.

[Title of Court and Cause—No. 2889.]

ORDER EXTENDING TIME TO AND INCLUDING FEBRUARY 15, 1929, WITHIN WHICH TO FILE AND DOCKET CAUSE ON APPEAL.

This matter coming on for hearing on the motion of the plaintiffs above named, the appellants, for an order extending the time within which to file and docket the record herein on appeal with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, and it appearing to the satisfaction of the Court that the time allowed by law and the order of this Court allowing said appeal is insufficient for the purpose, and that the plaintiff-appellant desires an extension of time until and including the 15th day of February, A. D. 1929, within which to file and docket said cause as aforesaid, and all and singular the matters being fully understood and considered by this Court,—

IT IS THEREFORE ORDERED that the plaintiffs-appellant be and they are hereby given and granted until and including the fifteenth day of February, A. D. one thousand nine hundred twenty-nine, within which to file and docket the record on appeal with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California.

Done in open court at Fairbanks, Alaska, December 14, A. D. 1928.

CECIL H. CLEGG,

District Judge.

Due service hereof admitted this December 14, 1928.

LOUIS K. PRATT,

Attorney for Appellee.

Entered in Court Journal No. 17, page 361. [73]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, Rob't W. Taylor, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 73 pages, constitutes a full, true and correct transcript of the record on appeal in cause No. 2889, entitled John W. Felder, Maurice A. Gale, George Schmidt and Robert Gierke, Copartners Doing Business Under the Firm Name and Style of Felder, Gale and Company, Plaintiffs, vs. H. W. Reeth, Defendant, and was made pursuant to and in accordance with the praecept of the plaintiff, filed in this action and made a part of this transcript, and by virtue of the said appeal and citation issued in said cause, and is the return thereof in accordance therewith, and I certify that the citation on appeal, order allowing appeal,

stipulation relative to printing of record and order extending time within which to file and docket cause on appeal annexed hereto are the originals thereto.

And I do further certify that the index thereof, consisting of pages number i and ii, is a correct index of said Transcript of Record; also that the cost of preparing said transcript and this certificate, amounting to Thirty-one Dollars and Fifty-five Cents (\$31.55), has been paid to me by counsel for appellant in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 31st day of January, 1929.

[Seal]

ROBT. W. TAYLOR,

Clerk of the District Court, Territory of Alaska,
Fourth Division. [74]

[Endorsed]: No. 5718. United States Circuit Court of Appeals for the Ninth Circuit. John W. Felder, Maurice A. Gale, George Schmidt and Robert Gierke, Copartners Doing Business as Felder, Gale and Company, Appellants, vs. H. W. Reeth, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Filed February 11, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

